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1 MS. PERRY: Join in the objection.

2 A. Yeah, I'm not quite sure I know how to
3 answer that question as to what I would have
4 expected him to know if they had audited -- kind of
5 tested or validated the financial model. It's our
6 job to do that. Not theirs. They audit what we
7 do. They don't do our accounting. We do our
8 accounting. They audit our accounting.

9 Q. And audits involve sampling and testing
10 what management does, correct?

11 A. Correct.

12 Q. And clearly, the results that this model
13 produced would be material to Provident's financial
14 statements, correct?

15 MR. BURKE: Objection. Calls for
16 speculation.

17 MS. PERRY: Objection. Assumes facts
18 not in evidence; mischaracterizes the record.

19 A. This model was looked at as an extremely
20 low risk model, and it's one of the things that
21 came out in the final analysis; and as a result, it
22 was one of the reasons it was able to fly kind of
23 below the radar screen for as long as it did,
24 because all it was doing was, you know, income and

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1 done on a balance sheet, it's right. Okay?

2 And it was only this brief period where
3 the model -- now, the model kept going on all the
4 stuff, it was done on-balance sheet clear through
5 03/04, but the stuff that was done new, it was no
6 longer -- we just quit doing it off-balance sheet
7 because we quit doing everything off-balance sheet
8 in 2000.

9 And then the accounting was 100 percent
10 correct. So again, this thing was used for
11 something that we didn't even do anymore. So it
12 just didn't receive the kind of, you know, scrutiny
13 that you -- that we might have hoped as it turned
14 out.

15 Q. Who specifically told you that this
16 model was an extremely low risk model?

17 MR. BURKE: Objection.

18 MS. PERRY: Objection.

19 MR. BURKE: Asked and answered.

20 A. Yeah, I just -- I answered that.

21 Q. I said what person, okay, who
22 specifically?

23 A. I'm telling you that it was viewed --
24 MS. PERRY: Foundation.

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1 expense. Nothing fancy about it.

2 Once it got off to a wrong start, it
3 just kind of, you know, kept going. And it was
4 never viewed as anything, you know, of a model that
5 was any kind of super higher risk model where you
6 pay a lot of attention, because it was
7 extraordinarily complex and -- you know, make sure
8 all the time that the darn thing's accurate.

9 This did not fall in that. So I don't
10 know what my CFO would have expected of E&Y because
11 I know he didn't view it either as being a high
12 risk model.

13 Q. Where did you get the understanding that
14 this was an extremely low risk model?

15 A. I just told you. You know, it was just
16 recognizing income and expense, and we looked at
17 these transactions, you know, as loans; and so the
18 accounting should have been pretty straightforward.
19 What really happened -- in fact, we brought -- we
20 quit doing off-balance sheet financing for auto
21 lease in...

22 Q. 2000.

23 A. Okay. And if you look at the accounting
24 from them going forward and all the stuff that's

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1 A. -- viewed in the company as not being a
2 high risk model.

3 Q. By Chris Carey, correct?

4 MR. BURKE: Objection.

5 A. By the staff, the financing accounting
6 staff.

7 Q. Okay. Please tell me which individuals
8 you're referring to?

9 A. You know, I can't get inside the head of
10 every individual. Okay? I can tell you the senior
11 leadership there looked at it as lower risk. That
12 includes Carey, Stollings, and others.

13 Q. Which others?

14 A. Boy, would you like to get a list of
15 everybody in the financing accounting area?

16 Q. No.

17 A. I don't know everybody that was
18 involved.

19 Q. Mr. Hoverson, I'm simply asking a
20 question, and you've now partially answered it, and
21 I thank you. I appreciate that. So you said
22 Carey, Stollings, and others. So who else can you
23 remember?

24 A. Farrenkopf.

60 (Pages 234 to 237)

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1 Q. Okay. Tayfun Tazun?
 2 A. Other than that, I don't know who
 3 exactly would have been involved.
 4 Q. All right. Do you see in the fourth
 5 paragraph it says, Mr. Gerde reported the size of
 6 the problem now appears to be in the area of 130
 7 million? Do you see that?
 8 A. I do.
 9 Q. And that's clearly a material number,
 10 correct?
 11 MR. BURKE: Objection. Mischaracterizes
 12 the entire document -- mischaracterizes the
 13 section, taking it out of context.
 14 A. And he also said he described this as
 15 nonsensical, right?
 16 Q. Well, we're not there yet. It says --
 17 A. I told you it was fluid.
 18 Q. Okay. We're on --
 19 A. We were kind of making sausage here and
 20 reporting to the audit committee as we were going.
 21 Q. Okay. We're on Tuesday, February 25th,
 22 2003, special meeting of the audit committee. You
 23 made a presentation, and at that presentation,
 24 Mr. Gerde reports that the size of the problem now

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1 A. Yeah.
 2 MR. BURKE: What number?
 3 MR. BRAUTIGAM: 130 million.
 4 A. 130 million.
 5 Q. Okay. And that's consistent with what
 6 you were saying about a fluid transaction, correct?
 7 A. Yeah.
 8 Q. Okay. Do you see in the next paragraph
 9 there's a 4(m) agreement, with small "M" in
 10 parenthesis?
 11 A. I do.
 12 Q. What does that mean?
 13 A. It's a regulatory matter. Frankly, I'm
 14 not really allowed to discuss it.
 15 Q. Are you refusing to answer the question?
 16 MR. BURKE: He's just saying he can't
 17 discuss it.
 18 A. I'm not allowed by the realtors to
 19 discuss this stuff. This is regulatory in nature.
 20 Q. Well, respectfully --
 21 A. If you can get a judge to tell me to say
 22 it, I'll be happy to do it, but until --
 23 MR. BURKE: So at the very least, I'm
 24 instructing him not to answer subject to

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1 appears to be in the area of 130 million, correct?
 2 A. Yeah, which was definitely out of
 3 Mr. Gerde's area of expertise, I might add, since
 4 he's not the chief financial officer. But that's
 5 what he said at the time; and obviously, that's not
 6 what it turned out to be.
 7 Q. Okay. What did it turn out to be?
 8 70-90 million?
 9 MR. BURKE: Objection.
 10 A. We can add it up.
 11 MR. BURKE: Asked and answered.
 12 A. Let's go add it up.
 13 MR. BURKE: We just looked at that.
 14 A. 20, 20, add up the numbers. What is it?
 15 Q. Okay. You're talking about the press
 16 release --
 17 A. Yeah.
 18 Q. -- that's attached to the CAC?
 19 A. Yeah, those. Add them up.
 20 Q. I believe that comes up to about 70
 21 million.
 22 A. All right.
 23 Q. Okay. So this number was overstated,
 24 correct?

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1 addressing this under protective order
 2 because, obviously, this is confidential --
 3 THE WITNESS: I can't.
 4 MR. BURKE: -- regulatory information.
 5 MR. BRAUTIGAM: Okay.
 6 THE WITNESS: Yeah.
 7 MR. BRAUTIGAM: I accept your
 8 instruction. We'll move on.
 9 MR. BURKE: We'll deal with it.
 10 BY MR. BRAUTIGAM:
 11 Q. Is the 4(m) agreement, whatever it is,
 12 something that you would expect the chairman of the
 13 audit committee to know?
 14 MR. BURKE: Objection to form;
 15 foundation.
 16 A. Yeah, I'd just rather not talk about the
 17 4(m) agreement.
 18 Q. Okay. Well, a couple weeks ago, I asked
 19 Dr. Steger what the 4(m) agreement was, and he
 20 didn't seem to have any idea.
 21 A. Yeah, well --
 22 Q. Does that surprise you?
 23 A. It's not around anymore. It's kind of
 24 history, old news. There is no 4(m) agreement

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1 anymore.

2 Q. Well, my question was a little
3 different.

4 A. I can't speak for Dr. Steger.

5 Q. I'm not asking you to. Does it surprise
6 you a couple of weeks ago Dr. Steger was unable to
7 tell me what it was?

8 MR. BURKE: Objection.

9 A. I can't speak for Dr. Steger.

10 MR. BURKE: Calls for speculation.

11 Q. You talk about practical issues in the
12 third line from the bottom.

13 A. The third line -- third paragraph or
14 third line?

15 Q. Fourth paragraph. Actually, the fifth
16 paragraph, third line from the bottom in the
17 middle.

18 MR. BURKE: It's the same sentence,
19 though, correct?

20 MR. BRAUTIGAM: Yes.

21 MR. BURKE: I believe -- and you correct
22 me if I'm wrong -- that the witness has
23 already indicated that he's not allowed to
24 discuss the aspects that are discussed in this

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1 A. The numbers.

2 Q. Okay.

3 A. Our conclusion as to what the correct
4 thing to do here, what are the correct numbers, how
5 they apply, you know, and get all that done before
6 we have this, you know, reviewed by anybody else.

7 Q. Mr. Hoverson, as this process was
8 unfolding, were you working with Ernst & Young to
9 solve the problem, or were you working within
10 Provident to solve the problem and then present the
11 solution to Ernst & Young for them to approve of or
12 not approve of?

13 A. It's a little bit of both, which is what
14 happens. You know, you have to have some agreement
15 as to the way you're going to do it; that they're
16 in agreement -- right? -- with the way you're going
17 to do the accounting, because if they're not,
18 they're not going to sign off on it.

19 So first, you must work with them to
20 determine how to go about doing it and what should
21 be done and what accounting methodology should be
22 used. Then it's up to us to do it. Then they
23 check it and audit it to make sure that they agree
24 that it's right before we put it out in public.

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1 section, you know, because of regulatory
2 confidentiality constraints.

3 MR. BRAUTIGAM: Got it. So same
4 instruction?

5 MR. BURKE: Yeah.

6 THE WITNESS: Yes.

7 BY MR. BRAUTIGAM:

8 Q. Let's look at two paragraphs down. You
9 apparently described the process as, quote,
10 dynamic. What did you mean there?

11 A. Just that. It's moving all over. You
12 see the 130 million. The first number you saw was
13 55, I think, so obviously it was jumping around,
14 and it was -- there was -- turned out to be an
15 awful lot of complexity about going back and
16 redoing all these leases and making sure everybody
17 was clear on the right way to do it and then
18 getting the numbers right.

19 Q. Okay. In the last paragraph on this
20 page, it says, Mr. Hoverson responded by stating
21 the company needs to arrive at a conclusion before
22 a third-party review could occur.

23 A. Right.

24 Q. Conclusion as to what?

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1 Q. At this point in time, had Provident
2 essentially bypassed the local engagement team, and
3 were you dealing with national practice directors
4 or other specialists that came in from somewhere
5 else?

6 MR. BURKE: Objection. No foundation;
7 vague.

8 MS. PERRY: Objection to the
9 characterization it bypassed.

10 A. Yeah, actually, the answer to that is
11 no. The local engagement team -- the partner on
12 the account, Bill Weiners, was out of Columbus. He
13 was a banking partner, and we had local staff who
14 worked with us regularly, and then they had their
15 national practice people as well.

16 So it was a real collaboration. And the
17 local people were always involved because they're
18 the ones who actually did -- who audited what we
19 came up with.

20 Q. Did you trust the input of the people
21 from Ernst & Young at this point?

22 A. We did.

23 Q. How was it decided -- and this is
24 discussed in the first paragraph on the next page

62 (Pages 242 to 245)

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1 -- that PwC would be brought in?
 2 A. Well, the audit committee, I think, was
 3 performing good governance. And particularly, you
 4 have to remember, too, the context at the time --
 5 it's in 2003 -- was when governance was at its
 6 height.

7 And you've got, you know, obviously a
 8 very sensitive issue here, and it goes right to the
 9 heart of governance and how it's dealt with by the
 10 board and the audit committee.

11 So the audit committee felt strongly
 12 that once we, you know, settle on what we're going
 13 to do, that they wanted two things.

14 One, they wanted our result looked at by
 15 an independent group after -- even after we report
 16 it and look at what had happened and, you know, to
 17 look at what we'd done.

18 And the fact that E&Y said it was okay
 19 and we reported it, they wanted it independently
 20 reviewed as well after the fact by an independent
 21 party; and in this case, that turned out to be PwC.

22 Q. Why did you announce the first
 23 restatement before you had a second opinion, so to
 24 speak, with PwC?

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1 right.

2 A. Okay.

3 Q. We're now Friday, February 28th, 2003,
 4 correct?

5 A. Okay.

6 Q. Special meeting of the audit committee?

7 A. Right.

8 Q. And you were present in person for at
 9 least part of the meeting, correct?

10 A. Um-hum, yes.

11 Q. And you referred to FAS 13, auto sales
 12 lease back review of accounting methods, correct?

13 A. Yeah, I'm looking at it. Yeah.

14 Q. Are you familiar with something known as
 15 the units method?

16 A. This is an E&Y term. I'd never heard it
 17 before. In the interim, that really -- I don't
 18 believe that's what was done, although I'm not
 19 sure.

20 Q. What was your understanding of the units
 21 method?

22 A. As I said, I'm not really sure. I
 23 remember -- it was not something I'd ever heard
 24 before. Let's see what it says here. (Examining

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1 A. Because we felt the numbers were right
 2 and were comfortable with what we had done, you
 3 know, obviously.

4 Q. If I understand this problem correctly,
 5 it went on for a number of years, right?

6 MR. BURKE: What problem?

7 Q. Modeling problem.

8 A. Yeah.

9 Q. And once it was brought to your
 10 attention, it was solved in a matter of weeks,
 11 correct?

12 A. Yes.

13 Q. Did that ever raise questions?

14 A. Enormous amount of man hours. What do
 15 you mean raise questions? I need a quick break.

16 (A brief break was taken from 3:41 to
 17 3:46, 5 minutes.)

18 MR. BRAUTIGAM: Okay. Back on the
 19 record. Mary Helen, you there?

20 MS. PERRY: Sure am.

21 BY MR. BRAUTIGAM:

22 Q. Mr. Hoverson, if I could direct your
 23 attention to the page ending 073. Do you have that
 24 in front of you? The small numbers on the bottom

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1 document.) It was not anything I was familiar with
 2 before this. I don't remember if we ended up using
 3 it or not. We'd have to go further to find out.

4 Q. It doesn't seem it was actually used.

5 Is that your recollection?

6 A. Yeah, but I'm not sure. I'm not sure
 7 what ended up being used. I remember when it was
 8 discussed and it was new to everybody, and...

9 Q. Could you describe how the units method
 10 worked?

11 A. I can't.

12 Q. Okay. On the second page, 074, it says,
 13 Mr. Hoverson added that E&Y's national offices,
 14 quote, solidly, unquote, on the units method, but
 15 he does not know yet why they are now taking this
 16 position.

17 A. Right.

18 Q. Do you see that?

19 A. I do.

20 Q. Did it turn out that E&Y's national
 21 office was not so solidly behind the units method?

22 A. I would have to go further, but as I
 23 said before, this was very fluid. We'd have to go
 24 probably to the next meeting and see.

63 (Pages 246 to 249)

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1 Q. Okay. Well, we're not there yet, but --
 2 A. Right. Again, this is kind of a work in
 3 progress --
 4 Q. All right.
 5 A. -- that you're reading. We're reporting
 6 everything -- everything that happened was reported
 7 to the audit committee.
 8 Q. Did what Ernst & Young was telling you
 9 or not telling you or changing inspire confidence
 10 in their abilities at this point?
 11 MR. BURKE: Objection to form.
 12 MS. PERRY: Objection to form.
 13 MR. BURKE: Assumes facts not in
 14 evidence. You may answer.
 15 A. Yeah, it -- the whole thing was, you
 16 know... Folks seemed confused as to what to do.
 17 It took them a while.
 18 Q. Okay. On page 3 of these minutes ending
 19 075 in the third full paragraph, there's a
 20 reference to a drop dead date concerning the 4(m)
 21 agreement. That's regulatory stuff, correct?
 22 A. Yes, it is.
 23 Q. And per Mr. Burke's instruction, you
 24 can't talk about that right now under these

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1 that? 078.
 2 A. All right.
 3 Q. Now, this meeting was called to order at
 4 9:00 a.m., correct?
 5 A. That's what it says.
 6 Q. And you opened the meeting by stating
 7 that the matter is not yet finalized, correct?
 8 A. Correct. That's what it says.
 9 Q. Did that concern you at this point?
 10 MR. BURKE: Objection to form; vague.
 11 I'm not sure what you're referring to.
 12 A. It was a drawn-out process.
 13 Q. There were some indications that you
 14 wanted to make the announcement in February, but
 15 for whatever reason, it didn't happen, correct?
 16 MR. BURKE: Objection to the
 17 characterization; assumes facts not in
 18 evidence.
 19 A. Yeah, we would have liked to have made
 20 the announcement as soon as we could; but you know,
 21 we weren't going to until we had it right.
 22 Q. Exactly. At the very last line of this
 23 page, Mr. Pedoto asked which result would be better
 24 for the company; and Mr. Carey answered,

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1 circumstances, correct?
 2 A. Right.
 3 MR. BURKE: Same instruction,
 4 Mr. Brautigam.
 5 A. Yeah.
 6 Q. Okay.
 7 A. It's not really relevant either.
 8 Q. Was it your practice to read audit
 9 committee minutes?
 10 A. Not always, but, you know, I read them
 11 pretty regularly. These, I certainly did --
 12 Q. Okay.
 13 A. -- because I was involved in the
 14 meetings.
 15 Q. Right. But you weren't a member of the
 16 audit committee?
 17 A. Correct.
 18 Q. You weren't excluded from reading the
 19 minutes, correct?
 20 A. That's right. No, I could. But I, you
 21 know, get other things on audits. So I generally
 22 know what's going on.
 23 Q. Let's jump to the March 3rd, 2003,
 24 special meeting of the entire board. Do you see

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1 off-balance sheet treatment would be better because
 2 this is a credibility issue. Do you see that?
 3 A. Where's that?
 4 Q. The last paragraph continuing over to
 5 the --
 6 A. Yeah.
 7 Q. -- next page. And Mr. Carey then
 8 predicted that E&Y would confirm its long-standing
 9 advice that the end result would be off-balance
 10 sheet treatment. Do you see that?
 11 A. I do.
 12 Q. Was that something that Provident was
 13 really fighting for?
 14 MR. BURKE: Objection. Mischaracterizes
 15 and assumes facts not in evidence.
 16 A. No.
 17 MS. PERRY: Objection.
 18 A. I mean, it is -- it is what it is. That
 19 had been their position. That's why it was
 20 off-balance sheet. Obviously, we'd rather not have
 21 to change that because, you know -- you know,
 22 although it's -- the financial impact -- there
 23 really isn't any, because it's already counted
 24 capital and all of the other stuff.

64 (Pages 250 to 253)

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1 But as Chris said, it's a credibility
2 issue. But in the end, you know, we'll do what
3 they say we must do. And if they change their
4 mind, they change their mind, which, as I recall,
5 they did. They made us put it back on-balance
6 sheet.

7 Q. What do you mean credibility issue?

8 A. Just that, you know. We've got a
9 restatement, and now, also -- you know, it was
10 off-balance sheet, but it should have been
11 on. That's all.

12 Q. What is a financial holding company?

13 A. A financial holding company is a bank
14 holding company -- well, it's a special kind of
15 bank holding company that's allowed -- that has
16 powers to do things other than banking.

17 Q. Is PFGI a financial holding company?

18 A. It is not.

19 Q. Is any Provident entity a financial
20 holding company?

21 A. No.

22 Q. In the paragraph that begins,
23 Mr. Hoverson then stated, in the middle of the
24 page --

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1 A. Sure. Yeah.

2 Q. As things turned out, the units method
3 was not acceptable to Ernst & Young, correct?

4 A. Again, you know, it's kind of what I
5 remember, but this thing went back and forth so
6 many times, you know, it was hard to keep up.

7 Q. Okay.

8 A. But my memory of it is we did not use
9 units method.

10 Q. Now, we're on March 3rd, special meeting
11 of the Provident board of directors.

12 A. What page?

13 Q. 78.

14 A. Okay.

15 Q. And Mr. Carey is predicting that
16 off-balance sheet treatment would be reaffirmed by
17 Ernst & Young?

18 MR. BURKE: We're now back on where?

19 MR. BRAUTIGAM: 78 and 79.

20 A. We just talked about that.

21 Q. My question is, less than 48 hours
22 later, Provident made the initial restatement
23 announcement. I believe the press release is dated
24 7:31 a.m. on March 5th.

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1 A. Where are you at?

2 Q. In the middle of the page.

3 A. Yeah, okay. Get back to this 4(m)
4 stuff.

5 MR. BURKE: We're having the same
6 instruction on this.

7 A. To give you the context around that, I'd
8 have to discuss the 4(m) thing. Okay? And I just
9 -- I don't want to do that.

10 Q. Well, this was --

11 A. I'm told -- I'm told not to by my
12 regulators.

13 Q. This was talked about in other
14 depositions to some extent.

15 A. That's fine.

16 MR. BRAUTIGAM: And I mean, I understand
17 you're instructing him not to answer. I'm not
18 representing I accept that now.

19 MR. BURKE: I know you're not waiving
20 any rights.

21 BY MR. BRAUTIGAM:

22 Q. Certainly the regulators considered this
23 to be a serious matter, correct?

24 MR. BURKE: Objection.

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1 A. Okay. Well, that's when we release
2 them.

3 Q. Right. And my question is, when did
4 Ernst & Young arrive at its final decision,
5 whatever it was, between 9:00 on March 3rd and 7:31
6 on March 5th?

7 A. I can't tell you.

8 MS. PERRY: Assumes facts not in
9 evidence.

10 A. Somewhere between there.

11 Q. Okay. How did you learn of the final
12 decision?

13 MR. BURKE: Decision as to what?

14 Q. As to whether or not off-balance sheet
15 treatment would be allowed?

16 A. I don't remember.

17 Q. Do you remember the circumstances under
18 which you learned?

19 A. No. This was -- I don't. I mean, this
20 is an ongoing process. I spent half my time in the
21 CFO's office. I mean, we were all together all the
22 time.

23 Q. Did everyone agree --

24 A. It was very fluid.

65 (Pages 254 to 257)

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1 Q. Okay. Did everyone agree that before
2 the restatement announcement was released on March
3 5th at 7:31 that this was the appropriate way to
4 go?

5 A. Yes.

6 Q. And when we say everybody in that
7 previous answer, that would include you, Chris
8 Carey, the entire board of directors, and Ernst &
9 Young?

10 MR. BURKE: By the appropriate way to
11 go, again are we speaking of off-balance sheet
12 and --

13 MR. BRAUTIGAM: Off-balance sheet.

14 MR. BURKE: -- on-balance sheet?

15 MR. BRAUTIGAM: I'm talking about all
16 the events leading up to the announcement of
17 the first restatement that had been discussed
18 in these board minutes.

19 MR. BURKE: Wait a minute. That's a
20 much broader question. I thought you were
21 talking about did everybody agree that putting
22 it back on-balance sheet was the way to go.

23 MR. BRAUTIGAM: Correct.

24 MR. BURKE: Is that what you're talking

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1 Q. Right. Which gentlemen or ladies were
2 involved in this process?

3 A. Well, Rich Huskins was involved. As I
4 recall, there was some other people that came in
5 from national at the end. There was another fellow
6 who came in who was the super leasing guy from
7 national office, and I think that's when the final
8 determination was made on how to do it.

9 Q. And you don't remember the name of the
10 super --

11 A. I don't.

12 Q. -- leasing guy?

13 A. I don't.

14 Q. Would you turn to the page ending 082,
15 please. Do you recognize the handwriting on this
16 page?

17 A. I don't.

18 Q. Would you just skim through and see if
19 you recognize the handwriting anywhere in the
20 document?

21 A. (Examining document.) I see somebody
22 took a day off. I don't recognize it. I don't
23 know who it is.

24 Q. Good enough. Would you kindly pick up

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1 about?

2 MR. BRAUTIGAM: That's what I'm talking
3 about.

4 MR. BURKE: Okay.

5 A. Swell, the on-balance sheet/off-balance
6 sheet thing was very much a sidebar in this thing;
7 not a very big issue.

8 Everybody agreed when we issued the
9 restatement with how we went about it and what we
10 said, including on-balance sheet/off-balance sheet
11 as it was determined by -- everybody was in
12 agreement at the time that that was the correct
13 thing to do. That was the final determination.

14 Q. If you believe that the off-balance
15 sheet/on-balance sheet was really a sidebar and not
16 a big issue, what do you think the big issue was?

17 A. The numbers and the fact that we, you
18 know, had an error that had been there for several
19 years.

20 Q. Who at Ernst & Young insisted that these
21 transactions be put back on the books?

22 A. It was a collective decision by them,
23 and they always -- you know, they always agree on
24 whatever position they take.

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1 Plaintiffs' Exhibit 93. It looks like this
2 (indicating).

3 A. Okay.

4 Q. The first two pages of Plaintiffs'
5 Exhibit 93 are the first page -- or a copy of part
6 of the first page of the Wall Street Journal for
7 March 6th, 2003, and then the jump article, which
8 appeared in the B section; is that right?

9 MR. BURKE: Objection. Calls for
10 speculation. You can answer.

11 A. The what now? What's the question
12 again?

13 Q. The first two pages of document 93 are a
14 copy of part of the first page of the Wall Street
15 Journal from March 6th, 2003 --

16 A. Yes.

17 Q. -- and then the article that's
18 referenced.

19 MR. BURKE: There's no date on this on
20 the second page. It may be; may not be. I
21 just don't know.

22 A. Yeah, might be. Probably is. I don't
23 -- you know, I don't...

24 Q. Okay.

66 (Pages 258 to 261)

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1 A. There's no dates on here, so...

2 Q. And on the first page, it indicates that

3 the firm's shares fell 20 percent. Is that

4 consistent with your recollection of what happened

5 that day?

6 A. Um-hum.

7 Q. And do you remember approximately from

8 what they fell to to where they ended up?

9 A. Well, they ended up down around \$20, as

10 I recall.

11 Q. It actually dipped into the teens,

12 didn't it?

13 A. Might have. Not very long.

14 Q. What was OHSL trading at in the ten-day

15 period prior to December 3rd, 1999?

16 A. OHSL? I have no idea.

17 Q. Excuse me. Provident.

18 A. The date of the transaction?

19 Q. Yes, the date the merger closed.

20 A. Around 40, I believe.

21 Q. I believe it was a little bit above 40.

22 A. Okay.

23 Q. What's Provident stock trading at now?

24 A. Just under 40.

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1 Q. And OHSL shareholders who were forced to

2 convert their shares pursuant to the merger who

3 sold in the 20s or even in the teens would have

4 been harmed by the merger, correct?

5 MR. BURKE: Objection. Calls for

6 speculation.

7 A. Yeah, I'm not going to --

8 MR. BURKE: No causal relationship. You

9 may answer.

10 A. I'm not going to comment on that. I

11 don't have a comment on that.

12 Q. It's just a mathematical fact, right?

13 MR. BURKE: No. Objection.

14 A. I mean --

15 MR. BRAUTIGAM: Jim, I'm not ready for

16 your deposition yet.

17 MR. BURKE: Believe me, you're not.

18 A. The stock went down to, you know, 20

19 bucks; and, you know, six months later, it was back

20 to more than it was when this happened.

21 So, you know, the stock did what it did.

22 I don't know what they did. Okay? You can work

23 your own arithmetic based upon what they did or

24 didn't do.

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1 Q. Do you believe that OHSL shareholders

2 who were forced to convert into Provident stock and

3 who did not sell are better off today than if the

4 merger had not taken place?

5 A. Yeah, I can't -- I have no way of

6 knowing that. I think it's a fair transaction

7 then, and I think they ought to be happy with the

8 currency they have today. And we had some bumps

9 along the road, and I wish they wouldn't have

10 happened, but they did.

11 Q. Mr. Hoverson, you said it was a fair

12 transaction then. What did you mean by that?

13 A. Just that.

14 Q. Is anything that we've discussed

15 regarding the restatement and the fact that

16 Provident's numbers included in Defendants' Exhibit

17 1 were wrong -- does anything indicate that it was

18 not a fair transaction?

19 MR. BURKE: Objection. Calls for

20 speculation; assumes facts not in evidence.

21 MS. PERRY: Join in the objection.

22 A. Yeah, I mean, again, that was a fair

23 transaction when we did it. We had a restatement

24 in 2003. We did. This affected -- that affected

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1 the stock price in 2003 for a brief period of

2 time. I mean, those are facts.

3 Q. For the OHSL-Provident merger to be a

4 fair transaction, the proxy materials would have to

5 be truthful, accurate, and complete, correct?

6 MR. BURKE: Objection. Calls for legal

7 conclusion; calls for speculation.

8 A. They were truthful.

9 Q. Were they accurate?

10 A. Yes, they were accurate, you know, as we

11 submitted them. Again, we ended up restating the

12 numbers in 2003. You know the facts.

13 Q. So --

14 A. I'm not going to draw conclusions. The

15 facts are what they are.

16 Q. And what the facts indicate is that

17 although you believed the financial information to

18 be accurate in 1999, it turns out the information

19 was not accurate, correct?

20 MR. BURKE: Objection.

21 A. It turned out --

22 MR. BURKE: Argumentative.

23 A. -- that we restated the numbers in '97,

24 '96 -- you know, '97, '98, '99. That's what it

67 (Pages 262 to 265)

Page 266

1 turned out.
 2 Q. Okay. Do you know Joe Hallinan?
 3 A. I don't think so.
 4 Q. Did you ever talk to a reporter from the
 5 Wall Street Journal named Joe Hallinan?
 6 A. Not that I remember.
 7 Q. Were you ever quoted in the Wall Street
 8 Journal?
 9 A. Could have been, because they quote out
 10 of your press release.
 11 Q. Okay.
 12 A. That's what they basically do.
 13 Q. Were you accurately quoted in this
 14 document, specifically the Wall Street Journal
 15 article?
 16 A. Well, there are quotes around two
 17 things. Blow to our credibility, I said
 18 that. Let's see. There are quotes around, Due to
 19 an improper understanding of the transaction. I
 20 said that. And there are quotes around, that our
 21 prospects remain solid, and I said that. I think
 22 the rest of it -- those are the only quotes.
 23 Q. Okay. So everything so far is accurate,
 24 correct?

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1 A. Yeah, that's right out of the press
 2 release, I think, if we looked at it. Plus, we had
 3 a conference call that morning.
 4 Q. Do you agree that the company
 5 essentially made two errors: It booked the auto
 6 lease transactions off its balance sheet when they
 7 should have been on the balance sheet, and it over-
 8 recognized income in the early years of the
 9 transactions?
 10 A. Yeah, we --
 11 MR. BURKE: Objection.
 12 A. -- corrected just slightly. The revenue
 13 was not over recognized. The expense turned out to
 14 be under accrued or recognized, whatever you want
 15 to say. And as it turned out, they want it
 16 on-balance sheet.
 17 Q. And this had more of an affect on the
 18 early years, 1997 to 1999, than on the later years,
 19 correct?
 20 MR. BURKE: What had more of an effect?
 21 A. Yeah, it's actually wrong.
 22 Q. Can you explain that?
 23 A. Can I just look at the press release?
 24 The larger numbers occurred later, not earlier.

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1 Q. Okay.
 2 A. (Examining document.)
 3 Q. Mr. Hoverson, was it Provident's intent
 4 to record these transactions off-balance sheet?
 5 A. I don't know what you mean by that. You
 6 -- it's not a choice. You either are required to
 7 or you're required not to, depending upon their
 8 evaluation of the transaction. And their initial
 9 evaluation was they -- you're required to -- you
 10 know, to record them off-balance sheet. It's not
 11 -- you don't get to choose this stuff.
 12 Q. Didn't Provident deliberately seek out
 13 off-balance sheet transactions for these leases?
 14 A. Not to my knowledge.
 15 Q. Okay. Would you turn to the page ending
 16 912, please.
 17 A. In the back?
 18 Q. Yes, sir.
 19 A. Okay.
 20 Q. Do you agree with the statement that
 21 earnings restatements rewrite a company's history
 22 generally in unflattering ways?
 23 A. Yeah, this is --
 24 MR. BURKE: Objection. Vague;

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1 argumentative.
 2 A. Yeah, this is --
 3 MR. BURKE: Calls for speculation.
 4 A. This is Yahoo. You know, this is their
 5 spin on it. This is their spin, not our
 6 spin. Okay? They can say what they want.
 7 Q. Do you agree with that?
 8 A. It's not what we said. It's not what I
 9 said. It's not what I'm saying now. I said it
 10 over and over again what it was.
 11 Q. Okay. Do you agree with Mr. Min's
 12 opinion?
 13 MR. BURKE: Mr. Min Woo of NYU's
 14 department of accounting?
 15 MR. BRAUTIGAM: Yes.
 16 A. We restated our numbers. Okay? Period.
 17 Q. Do you see Mr. Carey is quoted at the
 18 bottom of this page, going over to the next page,
 19 At some point, we expect to go out and tell people
 20 face to face exactly where why it happened and
 21 exactly why it won't happen again. Do you see
 22 that?
 23 A. Yeah, where are you at?
 24 Q. Very bottom of the first page going over

68 (Pages 266 to 269)

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1 onto the second page.
 2 A. Okay.
 3 Q. Was Mr. Carey authorized to speak on
 4 behalf of Provident?
 5 MR. BURKE: Are you asking him whether
 6 he can confirm that as his statement, or are
 7 you just asking him to --
 8 MR. BRAUTIGAM: No. Did he see that.
 9 MR. BURKE: Yeah, okay. That's fine.
 10 All right.
 11 A. I don't know if he said it.
 12 Q. I didn't ask you that. Was he
 13 authorized to speak on behalf of Provident?
 14 A. Sure.
 15 Q. Did you ever go out and tell people
 16 exactly what happened and why it won't happen
 17 again?
 18 A. Well, we went on the road. I can't
 19 remember when we went. It was quite a while
 20 though -- and talked about you do -- you know, you
 21 gotta face up.
 22 Q. Did you speak largely to institutional
 23 investors?
 24 A. Yeah.

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1 Q. Were these generally described as road
 2 shows?
 3 A. Yeah. I guess you could call them road
 4 shows. They weren't really road shows in the
 5 classic sense of selling stock.
 6 Q. Where did you go?
 7 A. You would go to New York or -- typically
 8 New York or Boston. I don't recall that we did
 9 much of this, frankly.
 10 As it turned out, I spoke at a
 11 conference in -- sometime mid last year and
 12 certainly addressed it in that public forum. We
 13 went on the road pretty late. We didn't do a lot
 14 of the road stuff.
 15 Q. When you went --
 16 A. The market seemed to move on from it,
 17 you know.
 18 Q. When you went to this conference, where
 19 was it?
 20 A. Cleveland.
 21 Q. Did you have a script?
 22 A. Yeah.
 23 Q. Were you accompanied by Mr. Carey?
 24 A. No.

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1 Q. Were you accompanied by anyone from
 2 Provident?
 3 A. I think Tony was there, but he came in
 4 late. I can't remember. Tony might have been
 5 there, Tony Stollings.
 6 Q. Was this a Power Point presentation?
 7 A. Um-hum.
 8 Q. Where is this script?
 9 A. It's back -- we have it.
 10 Q. And what was the thrust of your
 11 presentation?
 12 A. You know, what they always are, an
 13 explanation of the company; you know, what the
 14 company's made up of. It's always about the
 15 future, right? -- that's all they're interested
 16 in -- and your prospects and talk about your
 17 various business lines; how they're doing; where
 18 your weaknesses are; where your strengths are, that
 19 sort of thing. And in this particular -- you know,
 20 you have to acknowledge a restatement. You can't
 21 just act like it didn't happen.
 22 Q. Would you look at the last paragraph of
 23 this document, page 913?
 24 A. Yeah.

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1 Q. Do you agree that by keeping these
 2 transactions off-balance sheet, Provident gave the
 3 appearance that it had more capital and higher
 4 income?
 5 A. That's wrong.
 6 Q. Why?
 7 A. Just is. Doesn't affect income at all,
 8 number one. Income is reported the same way if you
 9 have it on-balance sheet or off-balance sheet. And
 10 secondly, the capital issue, you have to capital
 11 charge either way. Those are federal capital
 12 rules. Capital is the same.
 13 Q. Could you turn to page 916, please. Do
 14 you know who Jeff McKinney is?
 15 A. Yes.
 16 Q. Did you ever have a conversation with
 17 Mr. McKinney?
 18 A. I'm sure I did.
 19 Q. The headline says --
 20 A. Which Jeff does it right, by the way, he
 21 says.
 22 Q. It says Provident error faulted, expert
 23 decision made return on assets seem higher.
 24 A. Yeah, that's a bunch of BS.

69 (Pages 270 to 273)

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1 Q. And it says --

2 A. The implication is that we did it to
3 increase our return on assets, which would mean we
4 committed a fraud to -- that's kind of what he's
5 implying, which is bullshit.

6 Q. Did you ever write a letter to the
7 Enquirer and say this is bullshit?

8 A. No, we don't get down and fight in the
9 mud with newspapers.

10 Q. The first paragraph reads, A decision to
11 keep some accounting items off Provident Financial
12 Group, Inc.'s, balance sheet could have stemmed
13 from a desire to make the Cincinnati banking
14 company's returns appear higher than they were, a
15 banking expert said Thursday. Do you see that?

16 A. I remember the comment. I don't see it,
17 but I remember the comment. It's just total
18 speculation. There's no facts.

19 Q. It's the first paragraph.

20 A. Okay.

21 Q. And you don't believe --

22 A. That's newspaper -- that's selling
23 newspapers. That's all that is.

24 Q. And you certainly don't believe there

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1 A. No, never heard of him. He's a
2 professor.

3 Q. You agree that as a matter of math,
4 keeping the leases off the books would make the
5 return on assets appear higher, correct?

6 A. Yes, I do.

7 Q. Would you turn to the next page.

8 A. My favorite headline.

9 Q. That couldn't have been easy for you
10 that day, correct?

11 A. No, it was not.

12 Q. Did you ever talk with John Newberry?

13 A. No, I didn't.

14 Q. So he quoted from the press releases?

15 A. No. He talked to Chris.

16 Q. Okay.

17 A. He kind of asked him a beat-your-wife
18 question, and Chris made a mistake of answering
19 it. Are you Enron? No, we're not like -- are you
20 like Enron? No, we're not like Enron. What a
21 great headline. We're not Enron. Provident says
22 we're not Enron. That's how that happened.

23 Q. Mr. Carey talks about stopping the
24 practice in 2000 so it would be hard to say we're

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1 was any intentional wrongdoing, correct?

2 A. There wasn't any intentional wrongdoing.

3 Q. And do you believe that, whether there
4 was intentional wrongdoing or not, keeping these
5 items off the balance sheet made Provident's
6 returns appear higher than they were known?

7 MS. PERRY: Objection to the form.

8 A. No. The fact that the leases were
9 off-balance sheet would impact the ROA calculation.
10 That's a fact.

11 Q. Would you look at the page ending
12 918. There's a quote from some so-called expert,
13 and it says, He can make a company look more
14 valuable than its peers, which in turn could help
15 boost the stock valuation. Do you agree with that?

16 MR. BURKE: Objection. Calls for
17 speculation.

18 MS. PERRY: Join in the objection.

19 A. It isn't what's going on here, and this
20 guy just speculating on, you know, gee, if it was
21 this and this and this and this and this and this
22 and this, then it would be this. That's all that
23 is.

24 Q. Do you know Mr. Taparia (phonetic)?

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1 trying to hide something. Do you see that?

2 A. Where do you see that?

3 Q. Very bottom of the first paragraph going
4 over to the top of the second.

5 A. Okay.

6 Q. And you talked about what had happened
7 in 2000 and how you had stopped the practice of
8 recording certain leases off-balance sheet,
9 correct?

10 A. Yeah, we actually stopped recording all
11 off-balance sheet stuff. We started recording
12 everything we had on-balance sheet.

13 Q. Would that have been a logical time to
14 go back and look at the model?

15 MR. BURKE: Objection. Calls for
16 speculation.

17 A. Obviously, we didn't think so.

18 Q. Why not?

19 A. We didn't think there was anything wrong
20 with it. Hell, when it was looked at, they didn't
21 think there was anything wrong with it when we
22 found the error.

23 Q. When who looked at it?

24 A. Our finance and accounting staff who

70 (Pages 274 to 277)

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1 actually developed -- the way they caught the error
2 is we developed a new model because we wanted more
3 information, and we have investor reporting and all
4 this kind of stuff going along with this, and we
5 wanted to model with more bells and whistles.
6 That's how it -- that's how it came out.

7 Q. So you wanted a more complex model as
8 opposed to a simple model?

9 A. Well, it wasn't more complex. It would
10 do some more stuff for reporting and provide a
11 little more information and make it easier for the
12 accounting people, and that's when it really came
13 out.

14 Q. What individuals were involved in
15 creating the new model?

16 MR. BURKE: Objection. Foundation.

17 A. Yeah, I can't tell you exactly. It was
18 some outside people and inside people.

19 Q. Where did the outside people come from?

20 A. I don't know.

21 Q. Was it a consulting firm?

22 A. No. It was an individual who had been
23 involved with the original model. I think that's
24 correct.

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1 A. (Examining document.) That's what he
2 said.

3 Q. Why was Provident so quick to fall on
4 its sword and specifically to not blame E&Y for
5 these problems?

6 MR. BURKE: Objection to form.

7 A. Chris says it's our accounting.

8 MS. PERRY: Please note my joining in
9 the prior objection.

10 Q. Do you agree with Mr. Carey's quote
11 that, We let our shareholders down?

12 MR. BURKE: Objection.

13 A. I apologized to them.

14 Q. And even if there were no intentional
15 misconduct and even with your apology, there's
16 really no way of making this up to the OHSL
17 shareholders who were considering merging with
18 Provident in 1999, correct?

19 MR. BURKE: Objection. The question
20 makes no sense. Objection. Calls for
21 speculation; form.

22 A. I can't comment on that.

23 Q. Could you turn to page ending 930,
24 please. Do you recognize the handwriting on this

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1 Q. What's this guy's name?

2 A. Don't know.

3 Q. Do you know the name of his company?

4 A. (Witness shakes head, no.)

5 Q. Do you agree that leaving items off a
6 balance sheet essentially hides such financial
7 transactions?

8 MR. BURKE: Objection.

9 A. No, I do not. They're fully reported
10 and disclosed in the footnotes. It's not a choice.

11 Q. The next article talks about how --

12 A. Page?

13 Q. 921. The decision not to account for
14 auto lease financings on its balance sheet was made
15 in consultation with E&Y; is that right?

16 MR. BURKE: Is what right? Is that what
17 it says or is that statement right?

18 Q. Is that statement right?

19 MR. BURKE: Objection to foundation.
20 You may answer.

21 MS. PERRY: Objection.

22 Q. And Mr. Carey --

23 A. I'm just reading it. I haven't...

24 Q. Oh, okay.

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1 page going over to the next page?

2 A. I don't.

3 Q. You can put that aside. Would you pick
4 up Plaintiffs' Exhibit 91 again, please.

5 MR. BURKE: Off the record for a second.

6 (Off-the-record discussion.)

7 BY MR. BRAUTIGAM:

8 Q. Would you turn to page 302 in this
9 document, please. Would you read to yourself the
10 two paragraphs under, Why did you restate your
11 earnings.

12 A. Okay.

13 Q. Do you see the last sentence of the
14 first paragraph reads, PwC subsequently discussed
15 the accounting practice with E&Y, at which time E&Y
16 then agreed that the accounting practice was
17 incorrect; do you see that?

18 A. I do.

19 Q. What time frame are we talking about?
20 Is this before or after March 5th of 2003?

21 A. After.

22 Q. Did Ernst & Young agree that the
23 accounting practice was incorrect before or after
24 March 5th, 2003?

71 (Pages 278 to 281)

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1 MR. BURKE: Objection. Asked and
 2 answered.
 3 MS. PERRY: Objection. Foundation.
 4 A. Did...
 5 MR. BURKE: Under the accounting
 6 practice --
 7 A. Who's agree or disagree with whom and
 8 what? You asked a very general -- read the
 9 question.
 10 (Part of the question was read back.)
 11 A. What's the accounting practice mean?
 12 Q. The accounting practice as it's used in
 13 this document.
 14 A. That's not good enough. What do you
 15 want to know? Get specific.
 16 Q. Mr. Hoverson, I'm afraid I can't get
 17 more specific than that.
 18 A. Yes, you can.
 19 Q. This is a document that went out over
 20 your signature, I believe.
 21 A. I'm happy to answer the questions. Just
 22 ask me a little clearer what dates and whom and
 23 what you're looking for.
 24 Q. Okay. I'm focused on this sentence, and

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1 Q. Okay.
 2 A. Based upon the way that E&Y wanted us to
 3 do it. Subsequent to March 5th, after a review by
 4 PwC, PwC determined that the way E&Y had us do it
 5 was not correct. All right?
 6 At that time, based upon facts and the
 7 way they were presented by PwC, E&Y agreed with
 8 them then, and then we subsequently issued the
 9 second restatement on 4/15, I believe it is. Okay?
 10 Q. So after all the work that went into
 11 getting everything right by March 5th -- correct?
 12 A. Um-hum.
 13 Q. It was later determined by PwC that at
 14 least part of that work was wrong, correct?
 15 MS. PERRY: Objection.
 16 MR. BURKE: Objection.
 17 MS. PERRY: Assumes facts not in
 18 evidence; mischaracterizes the record.
 19 MR. BURKE: Calls for speculation. You
 20 may answer.
 21 A. Yeah, again, we talked about this. I'm
 22 getting tired of telling you things over and over
 23 again.
 24 This had to do with the finance lease --

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1 it says --
 2 A. Which sentence?
 3 Q. PwC subsequently discussed. Are you
 4 with me?
 5 A. Yeah.
 6 Q. The accounting practice. What is the
 7 accounting practice referred to in that sentence?
 8 A. The lease accounting.
 9 Q. Okay. With Ernst & Young --
 10 A. Um-hum.
 11 Q. -- at which time E&Y then agreed that
 12 the accounting practice was incorrect.
 13 A. Um-hum.
 14 Q. Now, that implies to me that this took
 15 place after March 5th of 2003, correct?
 16 A. I already told you that.
 17 Q. Right. But my question is, why did E&Y
 18 have to agree again if they had already agreed
 19 before March 5th, 2003?
 20 MS. PERRY: Objection. Mischaracterizes
 21 the evidence; also assumes facts not in
 22 evidence?
 23 A. Yeah, you just don't have it right. As
 24 of March 5th, we reported it. We restated. Okay?

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1 operating lease issue and the residual value policy
 2 and the whole issue of per unit or -- you know, the
 3 altogether policy.
 4 That was the determination that PwC
 5 made. They felt that our residual value policy was
 6 flawed as it relates to FAS 13 and getting FAS 13
 7 -- and getting finance lease treatment. That's
 8 what that restatement was about.
 9 Q. So in other words, this Q. and A. only
 10 relates to the second restatement?
 11 A. Correct.
 12 Q. Okay. Now, in the next paragraph,
 13 there's a sentence that says, This change in flow
 14 will cause earnings to decrease in years going back
 15 to 1994, but will cause earnings to increase from
 16 2003 to 2009; is that correct?
 17 A. Yes.
 18 Q. Okay. Does this mean that the numbers
 19 that Provident provided to OHSL were higher than
 20 they should have been for 1994?
 21 MR. BURKE: Objection. Calls for
 22 speculation.
 23 A. Again, we restated the numbers back. I
 24 don't know if there's a press release around here,

72 (Pages 282 to 285)

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1 but if there is, we could look at it to see what
2 they were restated, and they would have been
3 restated downward through -- from '94 through 2002.

4 Q. Okay. So in 1994, the numbers were too
5 high, correct?

6 MR. BURKE: Objection. Calls for
7 speculation; no foundation.

8 A. The earnings were decreased. The
9 restatement decreased the numbers in those years.

10 Q. Okay. And in 1994, the restatement
11 decreased earnings as well, correct?

12 MR. BURKE: Same objection.

13 A. I just said that.

14 Q. Okay. Did I say '95 in the previous
15 question?

16 MR. BURKE: No. You said '94.

17 Q. Okay. In '95, the numbers were
18 decreased as well, correct?

19 MR. BURKE: Objection.

20 A. You know. I don't have the numbers
21 front of me.

22 MR. BURKE: Right. I mean, it calls for
23 speculation.

24 A. If I had them, I could look at them and

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1 Q. What do you understand that to mean?

2 A. I understand it to mean that a dollar
3 today is worth more than a dollar a year from now.

4 Q. And does the first sentence in the
5 second paragraph under, Why did you restate
6 earnings -- this change does not materially impact
7 the total amount of earnings generated -- implicate
8 in any way the time value of money?

9 A. It does not.

10 MR. BURKE: Objection to form.

11 A. No.

12 Q. Are you familiar with the accounting
13 concept of revenue recognition?

14 MR. BURKE: Objection. Calls for
15 speculation; no foundation.

16 A. I suppose I am in general.

17 Q. And revenue recognition calls for the
18 numbers to be placed on the books at a time when
19 it's generated, correct?

20 MR. BURKE: Objection.

21 A. Yeah.

22 Q. And it's supposed to be applied
23 consistently to be in conformance with GAAP,
24 correct?

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1 tell you what they did; but the effect from '94
2 through '02 was to restate the numbers downward. I
3 would have to see them to know exactly each year
4 what happened.

5 Q. Okay.

6 A. Okay?

7 Q. But the effect leading up to the closing
8 of the OHSL-Provident merger on December 3rd, 1999,
9 was that the numbers for year-end '94, '95, '96,
10 '97 --

11 A. I don't know that. I'd have to see the
12 numbers. Okay?

13 Q. Isn't that what that says?

14 MR. BURKE: Objection.

15 A. It says it happened between -- it
16 decreased in years going back to '94. That's a
17 little -- that's not a very precise comment. If we
18 had the press release, we can look at it. Do you
19 have it?

20 Q. I'll see if we can find it.

21 A. All right.

22 Q. Are you familiar with something known as
23 the time value of money?

24 A. I am.

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1 MR. BURKE: Objection. Calls for
2 speculation; no foundation.

3 A. To the extent it can be, um-hum.

4 Q. And this 44.4 million dollar restatement
5 is inconsistent with GAAP in the sense that it
6 changes --

7 A. No, it --

8 Q. -- the timing of --

9 A. It is GAAP. You're required to restate
10 when you determine an error. Okay? It's GAAP.

11 Q. Because the prior accounting was not
12 GAAP, correct?

13 MR. BURKE: Objection.

14 A. No.

15 MR. BURKE: Calls for speculation.

16 A. You know, we restated the numbers. You
17 know, again, we did it. I've only told you that
18 150 times, but I guess you need it another 150
19 times.

20 Q. This Q. and A. called for questions to
21 be submitted in a group-wise internal mailbox; is
22 that correct?

23 A. I don't recall.

24 Q. On the last page of the document.

73 (Pages 286 to 289)

Page 290

1 A. If that's what it says.
 2 Q. And it says that all questions will be
 3 answered; is that right?
 4 A. That's what it says.
 5 Q. Who answered the questions?
 6 A. It would have been answered, you know,
 7 by people up in accounting.
 8 Q. Which people?
 9 A. Probably would have been a collective --
 10 Chris would have okayed all the answers.
 11 Q. Would he have looked at all of them?
 12 A. He would have.
 13 Q. And that's Chris Carey, correct?
 14 A. Hum.
 15 Q. Yes?
 16 A. Yes. I'm sure he would have.
 17 Q. Are these Q. and A. maintained in the
 18 files of Provident?
 19 A. I can't tell you.
 20 Q. Is it possible that they've been
 21 discarded?
 22 MR. BURKE: Objection. Possibility is
 23 -- if he knows, he can answer. If he doesn't
 24 know, he can't speculate.

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1 A. I have no idea.
 2 Q. Does Provident have a document retention
 3 policy?
 4 A. We do.
 5 Q. What is the policy?
 6 A. I can't tell you. I don't know exactly
 7 what it is, but there's a policy.
 8 Q. Can you tell me --
 9 A. I don't administer it.
 10 Q. Can you tell me what it is in broad
 11 strokes?
 12 MR. BURKE: Objection. Calls for
 13 speculation.
 14 A. I really can't. I mean, you know, it's
 15 in line with, you know, today's governance stuff on
 16 retention of documents.
 17 Q. And would you expect that it calls for
 18 the presentation of relevant evidence with respect
 19 to a restatement?
 20 MR. BURKE: Objection. Don't speculate.
 21 A. Yeah, I can't speculate.
 22 MR. BURKE: Calls for speculation.
 23 A. We have one. We follow it.
 24 Q. Do you follow it?

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1 A. I don't have anything.
 2 Q. Do you follow --
 3 A. Any documents. All I have are public
 4 documents. Those are all retained.
 5 Q. So you do follow policy?
 6 A. Public documents are all retained,
 7 period.
 8 Q. When you say public documents, if you
 9 send an email to Joe Steger, is that a public
 10 document?
 11 MR. BURKE: Objection.
 12 A. No. And that would be maintained in
 13 accordance with whatever our policy is on
 14 maintaining emails. It wouldn't have anything to
 15 do with me.
 16 Q. What is the policy of --
 17 A. I don't know.
 18 Q. -- maintaining emails?
 19 A. I don't know.
 20 Q. Do you delete emails?
 21 A. Sure.
 22 Q. Under what circumstances do you delete
 23 emails?
 24 A. As soon as I'm done with them, I delete

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1 them. That doesn't mean they're not retained. I
 2 delete them off my computer.
 3 Q. But they're theoretically retained
 4 somewhere else?
 5 A. I don't know what goes on elsewhere. It
 6 follows the retention policy.
 7 Q. How do you know when you delete a
 8 computer off your email, it's retained somewhere
 9 else?
 10 MR. BURKE: I don't think he said
 11 deleted a computer --
 12 A. I don't know for a fact. You know,
 13 that's just my operating assumption.
 14 Q. Have you sent emails to anyone related
 15 to the restatements?
 16 A. Employee stuff probably, communications.
 17 Whether or not this was email or if there was
 18 another email on the 5th -- I suspect there was an
 19 email on that day.
 20 Q. Have you communicated directly with any
 21 of the directors through email?
 22 A. No, I don't.
 23 Q. Have they communicated through email
 24 with you?

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1 A. No.
 2 Q. How about other documents that you
 3 personally created such as letters, whatever else
 4 you may write?
 5 MR. BURKE: What does how about mean?
 6 Q. Are they subject to the document
 7 retention policy?
 8 A. We keep our letters.
 9 Q. Please describe that process.
 10 MR. BURKE: Objection.
 11 A. They're in my folder in my secretary's
 12 desk.
 13 Q. Were you ever asked to produce any
 14 documents with respect to this litigation?
 15 A. Sure. We went through all of our files.
 16 I don't recall really having anything, but we went
 17 through all our files.
 18 Q. Approximately how much time did you
 19 devote to that process?
 20 A. Probably a couple hours or so, two to
 21 three hours. Actually, the lawyers came up and
 22 went through them.
 23 Q. Lawyers from KMK?
 24 A. No. Internal.

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1 Q. Would you pick up document 94,
 2 please. Take a moment to look at that.
 3 A. (Examining document.) Okay.
 4 Q. Are you familiar with something known as
 5 American Banker Online?
 6 A. No.
 7 Q. Have you ever seen this article before?
 8 MR. BURKE: Talking about this third
 9 page?
 10 MR. BRAUTIGAM: And fourth, yes.
 11 MR. BURKE: Okay. So not the first two?
 12 MR. BRAUTIGAM: Right.
 13 A. It's an article about the restatement.
 14 Q. Okay.
 15 A. I'm sure I read it.
 16 Q. Do you see Mr. Carey's quote, We knew
 17 the business wasn't super profitable, and it looked
 18 like it was more profitable than it should be?
 19 A. Yeah, I don't know what that means.
 20 Doesn't sound like an accurate quote.
 21 Q. Did Mr. Carey ever claim that he was
 22 misquoted?
 23 A. I have no idea.
 24 Q. Did he ever write a letter to the

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1 American Banker Online in an attempt to set the
 2 record straight?
 3 MR. BURKE: You mean other than
 4 pleadings filed in this case, correct?
 5 MR. BRAUTIGAM: I don't think any
 6 pleadings filed in this case were sent to
 7 American Banker Online.
 8 MR. BURKE: They certainly indicated
 9 that was a misquote; that you had taken it out
 10 of context.
 11 MR. BRAUTIGAM: In this case?
 12 MR. BURKE: In our case, yes.
 13 A. Yeah, I have no idea on any of that.
 14 Q. Did you ever try to rein in Mr. Carey
 15 and stop him from giving so many quotes to the
 16 press?
 17 MR. BURKE: Objection.
 18 A. Mr. Carey was fine.
 19 Q. So you have no idea what he's talking
 20 about here, correct?
 21 A. Look, I didn't quote it. It doesn't
 22 sound like anything Chris would say. The first
 23 part does; the second doesn't.
 24 Q. We knew this business wasn't super

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1 profitable?
 2 A. We knew that.
 3 Q. Did the model make it appear that the
 4 business was more profitable than it should have
 5 been?
 6 A. Yeah.
 7 Q. And when did you first know that?
 8 A. When we discovered the error. They
 9 didn't think it was profitable. Super profitable
 10 is different than -- you know, anyway. It's a thin
 11 business -- thin margin business for everybody.
 12 Q. And Provident has largely exited the
 13 business, correct?
 14 A. Largely.
 15 Q. Are you familiar with something known as
 16 gain-on-sale accounting?
 17 A. I am.
 18 Q. What is gain-on-sale accounting?
 19 A. Gain-on-sale accounting is where you
 20 sell the asset and it's written as a gain-on-sale.
 21 Q. And it's an accounting treatment,
 22 correct?
 23 A. Yes.
 24 Q. Are there other accounting treatments

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Page 298

1 that are different from gain-on-sale accounting
2 that could also be used?

3 MR. BURKE: Objection to form; vague.

4 MS. PERRY: Join in the objection.

5 A. No. If you're required to use gain-on-
6 sale, you're required to use gain-on-sale, period.
7 And the other way to not use it is to change the
8 nature of what you're doing so it's not required.
9 I mean, again, accounting isn't -- it's not a
10 voluntary thing.

11 Q. Was Provident ever required to use gain-
12 on-sale accounting?

13 A. Based on the way we were structuring the
14 transactions through 2000, yes.

15 Q. And did that change?

16 A. We changed the structure of them in 2000
17 so we would no longer have to do it.

18 Q. And you changed the structure to what in
19 2000?

20 A. The structure of the securitizations.

21 Q. And --

22 A. And I can't tell you exactly what we did
23 to do that, but we did.

24 Q. Okay. And why did you do that?

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1 A. Because we didn't want to treat them --
2 we didn't want to use gain-on-sale anymore because
3 the street wasn't paying us for the earnings.

4 Q. And that's another way of saying that it
5 was a disfavored accounting methodology, correct?

6 MR. BURKE: Objection.

7 A. By mid 2000, it was.

8 Q. And when Provident switched from gain-
9 on-sale accounting to another accounting
10 treatment -- by the way, what was the name of the
11 accounting treatment that you switched to?

12 MR. BURKE: Objection.

13 A. I'm not sure there's a name of it.

14 Q. What happened to Provident's stock price
15 when that was announced?

16 A. Nothing.

17 Q. It didn't go down significantly?

18 A. It didn't go down at all. It already
19 had gone down with the street telling us we don't
20 like this anymore. So when we -- that's when we
21 stopped.

22 Q. When you switched, did it go up?

23 A. Began to go up later that year.

24 (Off-the-record interruption.)

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1 BY MR. BRAUTIGAM:

2 Q. Mr. Hoverson, isn't it true that
3 Provident switched from gain-on-sale accounting in
4 August of 2000?

5 A. I just said that.

6 Q. And you said that the stock went up
7 toward the end of the year; is that correct?

8 A. I said the stock didn't move when we
9 went off of it, and then it gradually -- my
10 recollection, it began to go up after that.

11 Q. After what?

12 A. After going off gain-on-sale.

13 Q. How much time elapsed between going off
14 gain-on-sale and the stock going up?

15 A. I don't recall exactly.

16 Q. Approximately.

17 A. I don't recall.

18 MR. BURKE: Objection.

19 Q. Okay. Mr. Hoverson, you understand that
20 it's appropriate -- if you can't tell me exactly
21 what happened, then I can then follow up and say,
22 well, approximately. You understand that?

23 A. Yeah. I don't recall. I'm not going to
24 speculate on it. The fact's out there. We can

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1 look that up. You want to know? Look it up. We
2 can look at it; and I can say, yeah, I agree that's
3 what it did.

4 Q. Mr. Hoverson, would you pick up document
5 95, please.

6 A. Okay.

7 Q. Would you take a moment to look this
8 document over to yourself, please.

9 A. Okay.

10 Q. The first page of Plaintiffs' Exhibit 95
11 is an email from Greg Dooley to Todd Klostermann;
12 is that right?

13 A. That's what it says.

14 Q. And the date is August 24th of 2001,
15 correct?

16 A. Um-hum, right.

17 Q. And it's talking about new auto lease
18 models; is that right?

19 A. That's the subject.

20 Q. And Greg Dooley is head of internal
21 audit, correct?

22 A. He is.

23 Q. Who's Todd Klostermann?

24 A. I don't know. I don't know if he works

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Page 302

1 for Greg or if he's in finance. I don't know.

2 Q. Were new auto lease models being
3 developed in or about August 2001?

4 A. I can't tell you.

5 Q. Can you tell me from looking at this
6 document?

7 MR. BURKE: Objection. Asked and
8 answered.

9 A. Yeah, I don't know how to answer the
10 question. I don't know.

11 Q. Okay.

12 A. It's not something I was involved in.

13 Q. Does it appear that work was being done
14 on new auto lease models in August 2001?

15 A. It looks to me like they were looking at
16 it.

17 Q. And the second sentence reads, The
18 examiners have been asking a lot of questions, and
19 too many people are very sensitive and are on edge
20 regarding the topic of securitizations. Do you see
21 that?

22 A. I do.

23 Q. Have you ever seen this email before?

24 A. No.

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1 Q. Why would anything the examiners do make
2 Provident's people sensitive and on edge?

3 A. It doesn't say that --

4 MR. BURKE: Objection. Foundation;
5 calls for speculation.

6 A. It doesn't say that's what's making them
7 -- you know, I don't know what he's -- you'd have
8 to ask him.

9 Q. Doesn't it say that the examiners have
10 been asking a lot of questions, and too many people
11 are very sensitive and are on edge regarding the
12 topic of securitizations?

13 A. Yes.

14 MR. BURKE: That's what it says.

15 A. It doesn't say that they're connected.
16 You would have to ask Greg. He wrote it.

17 Q. What questions is Mr. Dooley referring
18 to in the last line?

19 MR. BURKE: Objection. Calls for
20 speculation; foundation. You may answer.

21 A. What what now?

22 Q. Mr. Dooley says, We will go back to the
23 questions after --

24 A. Oh, I don't know.

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1 Q. When did you first learn that anyone at
2 Provident was working on new auto lease models?

3 A. I couldn't tell you. No idea.

4 Q. Any idea what year it might have been?

5 A. Hum-um.

6 Q. Would it surprise you if work was being
7 done of new auto lease models in 2001?

8 A. I don't have any knowledge one way or
9 the other, so I wouldn't be surprised one way or
10 the other.

11 Q. In the second sentence, whom do you
12 believe the examiners refers to?

13 A. The federal or state examiners I'm sure
14 is who that refers to.

15 Q. Why would people working on auto lease
16 models be sensitive and on edge regarding the topic
17 of securitizations?

18 A. I don't know. I don't know that the
19 securitization topic or comment here necessarily is
20 referring to auto lease securitizations either. A
21 lot of securitizations in the company, so I think
22 -- I don't even know for sure what it's referring
23 to. The examiners always looked at that stuff
24 pretty close, all of it.

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1 Q. -- a, quote, settle down period.

2 A. I don't know.

3 Q. What is a settle down period?

4 A. Don't know.

5 Q. Who's John Farrenkopf?

6 A. He's on the finance -- senior VP.

7 Q. Do you see Tony in the penultimate line
8 of the document?

9 A. I'm sorry?

10 Q. Tony -- does that refer to Tony
11 Stollings?

12 A. Where are you at?

13 Q. (Indicating.)

14 A. Yeah, Tony Stollings.

15 Q. Was Tony Stollings working with new auto
16 lease models in August of 2001?

17 A. I don't know. Tony Stollings is the
18 chief accounting officer of the bank. He's
19 involved in anything going on. The modeling really
20 fell under Farrenkopf. The model was his
21 responsibility.

22 Q. And at least from this document, it
23 appears that Mr. Farrenkopf was developing new
24 models in August of 2001, correct?

77 (Pages 302 to 305)

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1 A. He was wanting to discuss the new models
2 with Tony. I don't know what was on John's mind.

3 Q. And this implies that new models already
4 exist, right?

5 MR. BURKE: Objection. Misstates the
6 record; assumes facts not in evidence;
7 mischaracterizes the document.

8 A. No, I don't think it does at all.

9 Q. Okay. Turn the page, please. You said
10 that John Farrenkopf was in charge of the model,
11 correct?

12 A. Yeah. He reported in to him.

13 Q. Who was Michelle Beagle?

14 A. An analyst; works on auto lease and
15 reporting and worked with the model.

16 Q. And was she sick at some crucial point?

17 A. Sick or gone or something. I don't
18 remember. There was something about Michelle.

19 Q. How long was she gone?

20 A. I can't tell you. I don't know.

21 Q. Days? Weeks? Months?

22 MR. BURKE: Objection. Asked and
23 answered.

24 A. I don't know.

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1 Q. And I'm trying to link Dr. Steger's
2 testimony with her being gone and the 2003
3 restatements. Is there any link that you can think
4 of?

5 MR. BURKE: Objection.

6 A. There's no link. No link that I know
7 of.

8 Q. Okay. Have you had the opportunity to
9 read the second page of this document to yourself?

10 A. Yeah. I just looked at it.

11 Q. And it seems clear that people at
12 Provident are working on new models for auto lease
13 deals, correct?

14 A. Yeah, again, my understanding of the new
15 models was driven a lot by getting more
16 information, not necessarily that there was
17 anything wrong with the income recognition off the
18 original model. That was kind of my understanding
19 from John.

20 Q. Well, in the second paragraph, it talks
21 about shortcomings of the current models, correct?

22 A. Yeah, I see that.

23 Q. And how the new models will address
24 these shortcomings, correct?

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1 Q. Did her departure significantly impact
2 on fixing the restatement issues?

3 MR. BURKE: Objection. No foundation;
4 assumes facts not in evidence. What do you
5 mean by fixing the restatement?

6 A. I thought Michelle was there when we did
7 the restatement.

8 Q. Well, Dr. Steger testified about some
9 woman being sick, and she was the only one who
10 understood the model, and nothing could get done
11 because she was sick. And he didn't remember her
12 name, and then I showed him Michelle Beagle on one
13 of the documents, and he seemed to remember this
14 was the person.

15 And do you remember an issue relating to
16 Michelle Beagle's absence?

17 A. I remember that there was, but I can't
18 tell you how long she was gone.

19 Q. Okay. Do you remember if this issue
20 took place in 2003?

21 A. No, no, no. I think it was significant
22 -- it was before that.

23 Q. And --

24 A. Like '01 or '02.

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1 A. I see it.

2 Q. And the time table for the whole
3 project, correct?

4 A. I wasn't involved in it, so I don't have
5 any knowledge of it.

6 Q. As CEO, you're ultimately responsible
7 for the models, correct?

8 MR. BURKE: Objection. Assumes facts --
9 A. I've already taken responsibility for
10 this accounting restatement. Okay?

11 Q. And the buck stops --

12 A. As I said, you know, accounting was our
13 responsibility, but I don't know the details of
14 this. All right?

15 Q. And the buck stops with you, correct?

16 MR. BURKE: Objection. Calls for
17 speculation.

18 A. I made my comment on that. Okay?

19 Q. You see in the last typed line, it says,
20 Based on the complexity of the issue, I'm sure I
21 will be talking to you or someone else in finance;
22 do you see that?

23 A. I do.

24 Q. Can you tell me what the complexity of

78 (Pages 306 to 309)

Page 310

1 the issue is?
 2 A. That the financings themselves were
 3 pretty complex.
 4 Q. What do you mean by the financings
 5 themselves?
 6 A. Just that.
 7 Q. If I go and lease a car and finance the
 8 lease through Provident, is that complex?
 9 A. That's not what we're talking about
 10 here.
 11 Q. Okay. What are we talking about?
 12 A. We're talking about the securitization.
 13 Do you know what a securitization is?
 14 Q. Describe it for me, please.
 15 A. It's a financing where you pledge the
 16 asset to an outside group, and they basically lend
 17 you money against that asset. That's a
 18 securitization.
 19 Q. The assets are bundled and sold,
 20 correct?
 21 A. Yes, or pledged.
 22 Q. What's the difference?
 23 A. They don't have to be sold.
 24 Q. What's the difference between sold and

Page 312

1 A. To Chris and to me.
 2 Q. Is it ever appropriate for Provident
 3 employees to go directly to the audit committee
 4 with respect to an accounting problem?
 5 A. If that's what they think they have to
 6 do, they're free to do that. Typically, you
 7 wouldn't go to the audit committee unless you felt
 8 that it was not being handled internally. That
 9 would be normal protocol.
 10 Q. Will you turn to the third page of the
 11 document ending 937. Who's Mark Von Handorf?
 12 A. Don't know.
 13 Q. Were you aware that revised auto lease
 14 securitization models were due to be completed by
 15 now, meaning September 9th of 2002?
 16 A. No.
 17 Q. Were you aware that the people working
 18 on these auto lease models had some kind of a time
 19 table?
 20 A. No.
 21 Q. As of August of 2001, did you believe
 22 that everything was fine with respect to the auto
 23 lease models?
 24 A. Yeah.

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1 pledged?
 2 A. Well, that's the gain-on-sale issue,
 3 whether or not they're sold for accounting purposes
 4 or just legally.
 5 Q. Who was in charge of finance and
 6 securitization accounting in August of 2001?
 7 A. Tony Stollings is in charge of all
 8 accounting ultimately.
 9 Q. And Todd Klostermann was involved
 10 specifically with --
 11 A. I don't know what Todd does.
 12 Q. Does it appear to you from the first two
 13 pages of Plaintiffs' 95 that there was significant
 14 concerns with auto lease models going back to
 15 August of 2001?
 16 MR. BURKE: Objection. Misstates the
 17 record; assumes facts not in evidence;
 18 mischaracterizes the document. You may
 19 answer.
 20 A. No, it doesn't say that to me. It says
 21 to me they want to review it. Doesn't say that
 22 they have significant concerns. If they would
 23 have, they would have raised them.
 24 Q. How would they have raised them?

Page 313

1 Q. As of September of 2002, did you believe
 2 that everything was fine with the auto lease
 3 models?
 4 A. I had no reason to believe otherwise.
 5 Q. Could you turn to the next page of the
 6 document, please. Do you recognize the handwriting
 7 on this page?
 8 A. I don't.
 9 Q. Okay. Would you turn to the next page.
 10 This is an email from you --
 11 A. Right.
 12 Q. -- on 7/29 on ground hog day, March 5th,
 13 2003, correct?
 14 MR. BURKE: Objection to the form.
 15 A. Yes. This was sent out to all
 16 associates that morning.
 17 Q. And in the second paragraph, you say,
 18 This is a very serious matter, correct?
 19 A. Um-hum.
 20 Q. And you go on to say, However, we are
 21 confident that there are no other transactions like
 22 these, correct?
 23 A. Yes.
 24 Q. Was the second restatement a transaction

79 (Pages 310 to 313)

Page 314

1 like this as you used it in that sentence?
 2 A. No. Different.
 3 Q. It was just different. Okay. Would you
 4 pick up document 96, please. Let's take a moment
 5 to read that to yourself.
 6 A. Okay.
 7 Q. Does this refresh your recollection to
 8 the name of the other accounting treatment that you
 9 went to from gain-on-sale accounting?
 10 A. I missed that we called it something.
 11 Q. Portfolio approach?
 12 A. I don't think that's a name; just
 13 descriptive. Either -- if you don't use gain-on-
 14 sale, then you -- gain-on-sale is kind of a thing
 15 all its own; otherwise, you're, you know...
 16 Q. Did you say in one of your previous
 17 answers about gain-on-sale that you were forced to
 18 use it?
 19 A. Well, by the nature of the structure --
 20 with the structures -- you know, the way we have
 21 them structured, you're required to use it, yeah.
 22 Q. What effect did the change from gain-on-
 23 sale have on Provident's earnings?
 24 A. Lowered them going forward.

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1 Q. And that's a common sense thing, because
 2 if you're recognizing all of the revenue at the
 3 very beginning, and you change from that, you have
 4 to recognize the revenue all the time, correct?
 5 MR. BURKE: Objection to form.
 6 A. Right. Over time, the earnings are the
 7 same. It's a question of when you recognize them;
 8 but from that point forward for a while, they would
 9 be lower. Eventually, they would catch up and be
 10 higher.
 11 Q. Didn't the market react in a dramatic
 12 way to the change from gain-on-sale accounting in
 13 that Provident stock went down significantly?
 14 MR. BURKE: Objection.
 15 A. No, it did not. In fact, let's see
 16 here. It wouldn't have said anything in here
 17 because this was the day -- this was the same day
 18 we released this.
 19 But as the fact of the matter is, the
 20 stock did not go down at all because the street had
 21 already discounted it into the numbers by saying,
 22 you know, we're not going to stop in giving you
 23 credit for these earnings. Our stock price had
 24 drifted down already. We were already down before

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1 we announced this.
 2 Q. Did the stock go up when you announced
 3 it?
 4 A. No, it stayed the same. It just didn't
 5 kind of move. The street was very much in favor of
 6 the announcement. It was applauded.
 7 Q. Would you pick up document 97, please.
 8 A. Okay.
 9 Q. First of all, do you recognize the
 10 handwriting on the first two pages of the document?
 11 A. I do not.
 12 Q. At the top of the page --
 13 A. It's all about auto lease, though.
 14 That's what it's about.
 15 Q. It says, E&Y was back check. Is that --
 16 can you interpret that?
 17 A. Seems to be what it says.
 18 Q. And Joy or Jay was the advisor with the
 19 investment bankers. Is there a Joy or a Jay at
 20 Provident who had responsibilities in this area?
 21 A. No, not that I know of.
 22 Q. Then there's some bullet points, review
 23 the EBO portion of the agreements. Do you see
 24 that?

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1 A. Um-hum.
 2 Q. What are EBO portions of the agreements?
 3 A. EBO stands for early buy-out.
 4 Q. And --
 5 A. That had to do with -- you know, it was
 6 a technical part of the whole determination from
 7 the accountant's standpoint.
 8 Q. Did this have to do with
 9 securitizations?
 10 A. It had to do with -- yes, it had to do
 11 with the financing and then our ability to early
 12 buy-out of the financing of the securitization.
 13 Q. And the next bullet point says something
 14 like schedule out the GL...
 15 A. I don't know. GL something.
 16 Q. ...by quarter, and then there was some
 17 numbers, by company. GL refers to general ledger,
 18 correct?
 19 A. I would assume.
 20 MR. BURKE: Objection. Calls for
 21 speculation. You may answer.
 22 Q. And the B word, could that be balances?
 23 MR. BURKE: Objection. Calls for
 24 speculation.

80 (Pages 314 to 317)

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1 A. Yeah, I don't know. Doesn't look like
 2 it.
 3 Q. That word is hard to figure out, isn't
 4 it?
 5 A. Hum.
 6 Q. All right. The next bullet point talks
 7 about review model inputs and model tie to
 8 agreements, and there's a star to the right. Do
 9 you see that?
 10 A. I do.
 11 Q. What does it mean to review model inputs
 12 and tie to agreements?
 13 MR. BURKE: Same objection.
 14 A. I don't know.
 15 Q. Next bullet point talks about pull
 16 residual review 1999, Randall Horner. Is that a
 17 name of a person who works at Provident?
 18 A. Don't know. Don't know.
 19 Q. What's a residual review?
 20 A. I don't know what they meant by that.
 21 Q. Was what Provident expected the fair
 22 market value of the autos to be after they came off
 23 of lease reviewed continually?
 24 MR. BURKE: Objection to form.

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1 A. What's the question?
 2 Q. Was what Provident expected the fair
 3 market value of the cars to be after they came off
 4 lease --
 5 A. They're all insured with the exception
 6 of a six-month portion. So except for that, we
 7 wouldn't really care.
 8 Q. Okay.
 9 A. It was looked at, though. We always
 10 managed that as well as we could. Wanted to
 11 maximize the value of the car.
 12 Q. The six-month portion that you talked
 13 about, is that sometimes referred to as a gap?
 14 MR. BURKE: Objection.
 15 A. No.
 16 Q. What does that refer to?
 17 A. It means we had a six-month period where
 18 we did not insure residuals.
 19 Q. Why not?
 20 A. Thought it was the right economics.
 21 Changed our mind.
 22 Q. The third bullet point, there's a box
 23 next to pull residual review, and it seems to
 24 indicate FMV leases at EBO date. That's talking

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1 about fair market value of leases at early buy-out
 2 date?
 3 MR. BURKE: Objection. Calls for
 4 speculation. You may answer.
 5 A. That's how I'd read it.
 6 Q. Do you know what's going on there?
 7 A. No.
 8 Q. Is it possible to tell what the date of
 9 these notes are?
 10 A. No, it's not.
 11 Q. All right.
 12 A. It could be -- this could be the first
 13 restatement or the second.
 14 Q. Okay.
 15 A. It could be either one.
 16 Q. It says something about understand new
 17 model, late '01, received base model, different
 18 LKE. Do you see that?
 19 A. Yeah.
 20 Q. Does this indicate to you that there was
 21 a new model that was received in late 2001?
 22 MR. BURKE: Objection.
 23 Speculation. You may answer.
 24 A. No, it doesn't. I don't know what it

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1 means.
 2 Q. LKE refers to like-kind exchange, right?
 3 A. That's right.
 4 Q. Can you describe that?
 5 MR. BURKE: Can you describe...
 6 Q. A like-kind exchange.
 7 MR. BURKE: In general?
 8 MR. BRAUTIGAM: Yes.
 9 MR. BURKE: Objection to form;
 10 relevance.
 11 A. In general, it means that this was a
 12 sale/lease-back transaction where we had sold the
 13 automobiles to an entity and leased them back for
 14 eight years.
 15 We would lease them out for five. So at
 16 the end of the fifth year, we would do what is
 17 called a like-kind exchange of the automobile when
 18 that automobile came off lease. And that would,
 19 you know, make the guy who owned it whole. It was
 20 a tax structure.
 21 Q. Did you say at the end of the fifth
 22 year?
 23 A. Or if that -- if the car went to five,
 24 whatever.

81 (Pages 318 to 321)

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1 Q. Whatever the lease period is?
 2 A. That's right.
 3 Q. Did Provident have something known as a
 4 business unit review?
 5 A. Um-hum.
 6 Q. What is the business unit review as it
 7 existed at Provident?
 8 A. We review our business units results on
 9 a monthly basis relative to plan.
 10 Q. And who is involved in that?
 11 A. Myself and CFO and division heads; their
 12 finance person; Tayfun Tazun.
 13 Q. Is that information reported to the
 14 board on a monthly basis?
 15 A. Not always, no.
 16 Q. What is Tayfun Tazun's role at
 17 Provident?
 18 A. He's involved in financings, really
 19 would be, and he's kind of Chris's number two guy.
 20 Although he's not the chief accounting officer;
 21 he's the finance guy.
 22 Q. Is Mr. Tazun an accountant by training?
 23 A. No, he's not. It's a Ph.D. in finance
 24 -- or economics.

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1 Q. Does Mr. Tazun have a particular area of
 2 expertise?
 3 A. Finance.
 4 Q. And do you believe that Mr. Tazun is
 5 qualified to opine on accounting issues?
 6 MR. BURKE: Objection. Calls for
 7 speculation.
 8 A. Yeah, I don't --
 9 MR. BURKE: You can answer.
 10 A. I don't know how to answer that. He has
 11 -- I'm sure he knows some accounting, you know, but
 12 he's not who I would ask.
 13 Q. Why not?
 14 A. Ask the CFO. That's what he's there
 15 for.
 16 Q. Mr. Tazun worked directly on the auto
 17 lease models, correct?
 18 A. I don't know that to be the case.
 19 Q. Do you know if Mr. Tazun submitted any
 20 affidavits in this case?
 21 A. I don't know.
 22 Q. You wouldn't consider Mr. Tazun to be
 23 independent of Provident if he was a Provident
 24 employee, correct?

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1 MR. BURKE: Objection. Calls for
 2 speculation. You may answer.
 3 A. He's a Provident employee.
 4 Q. Do you see on the penultimate line of
 5 this document, it says, Stream is negative, dash,
 6 servicing is positive?
 7 A. Um-hum.
 8 Q. What does that mean?
 9 A. I don't know.
 10 Q. And below that it says charge-off.
 11 What's a charge-off?
 12 A. Charge-off's a charge-off. That would
 13 be a bad debt. Credit.
 14 Q. On the left, it says, Issue regards
 15 larger income, discussed in ALCO, capital A-L-C-O?
 16 A. That's a liability committee.
 17 Q. And who constituted the asset and
 18 liability committee?
 19 A. Myself; Chris; Tayfun; Rob New; a number
 20 of other people on the finance staff that monitored
 21 our investment portfolio; Jim Gerde, chief risk
 22 officer; Ed Times, chief retail officer.
 23 Q. What is the function of the chief risk
 24 officer?

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1 A. To determine that our process for
 2 measuring and controlling risk are adequate.
 3 Q. Does that include the risk that the
 4 model on the auto leases would be incorrect?
 5 MR. BURKE: Objection. Calls for
 6 speculation; foundation. You may answer.
 7 A. Probably not directly. We have
 8 developed some new process around that, though. It
 9 didn't at the time.
 10 Q. Okay. Would you turn three pages into
 11 the document, please.
 12 MR. BURKE: 11948?
 13 MR. BRAUTIGAM: Yes.
 14 BY MR. BRAUTIGAM:
 15 Q. Who's Mark Von Handorf?
 16 A. I don't know. You asked me that before.
 17 Q. Excuse me. I don't mean to be --
 18 A. I think it looks like he's an internal
 19 audit guy. This is an internal audit memo.
 20 Q. What are TRACs?
 21 A. A track is a terminal rental adjustment
 22 clause, and it's a word of art in the IRS code; and
 23 basically is used with autos and trucks and things
 24 of that nature where you can have a fixed purchase

82 (Pages 322 to 325)

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1 option and still get true lease treatment for tax
2 purposes; a very special kind of lease, TRAC lease.

3 Q. Do you see the sentence where it says,
4 Leveraged or securitized are considered sales and
5 are off the balance sheet?

6 A. Yes.

7 Q. And this was what Provident wanted,
8 correct?

9 MR. BURKE: Objection. Asked and
10 answered.

11 A. Yeah, they were -- can't tell you what
12 we wanted.

13 Q. Well --

14 A. I wasn't involved in that.

15 Q. It didn't just happen that these
16 transactions were structured off-balance sheet; it
17 was an affirmative choice, correct?

18 MR. BURKE: Objection. No foundation.

19 A. Yeah, you'd have to ask the people who
20 did it. I didn't do it.

21 Q. Would you turn the page, please. We're
22 now on 949. What's the securitization review?

23 A. It appears to be what it says here. I
24 don't even know whose document this is.

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1 A. Yeah, as I read it, it says John
2 Farrenkopf's working on it. This looks like it was
3 just kind of a committee review to get an update on
4 everything that was going on.

5 Q. Actually it says John Farrenkopf is
6 working on a new model?

7 A. That's what I said.

8 Q. Is that different from testing the
9 existing model?

10 A. I suppose.

11 Q. And it also says an outside consultant
12 has been hired --

13 A. This is just reporting everything that's
14 been going on regarding securitization --
15 surrounding auto lease securitization, I believe.
16 So there were a number of things going on.

17 Q. In regard to what type of
18 securitization?

19 A. Auto lease.

20 Q. Oh, auto lease.

21 A. I think that's all it is. I think they
22 had a meeting, and this is an update on everything
23 going on.

24 Q. And there were problems with respect to

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1 Q. It's hard to figure out, isn't it? What
2 is your understanding of what a securitization
3 review is?

4 A. Make sure you're comfortable with what's
5 going on in general.

6 Q. And you see point 6 there?

7 A. Yes.

8 Q. In bold, it says, Analyze accounting
9 model to validate that estimates and assumptions
10 are appropriate; is that correct?

11 A. That's what it says.

12 Q. Is this the very same accounting model
13 that led to the 2003 restatements?

14 A. I would assume it is, but I don't know
15 for sure.

16 Q. And the date of this document is
17 7/31/01, correct?

18 A. Um-hum.

19 Q. And from this document, does it appear
20 that Provident personnel were analyzing the
21 accounting model to validate that estimates and
22 assumptions were appropriate?

23 MR. BURKE: Objection. Foundation;
24 calls for speculation. You may answer.

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1 the existing auto lease model, correct?

2 MR. BURKE: Objection.

3 A. That's not --

4 MR. BURKE: Misstates the record.

5 A. That's not what this says.

6 Q. Okay. Let's look at this sentence under
7 6.

8 A. My understanding is that everybody had
9 confidence, you know, that the income was being
10 reported out of that model.

11 Q. Okay. But under 6, the last sentence
12 reads, See what the problems are with the current
13 model and how the new one will fix those problems;
14 is that correct?

15 A. Yeah.

16 Q. Okay.

17 A. Doesn't say there were any problems. It
18 says see what they are.

19 Q. Well, doesn't that imply to you that
20 there are problems?

21 A. It doesn't.

22 MR. BURKE: Objection.

23 Q. If they weren't sure if there were
24 problems, wouldn't it say, See if there are

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Page 330

1 problems with the current model?
 2 MR. BURKE: Objection.
 3 A. I don't know what it would say, you
 4 know.
 5 Q. Okay.
 6 A. I don't know what they meant. All
 7 right?
 8 Q. Okay. Were you aware on or about July
 9 31st, 2001, that there were problems with the
 10 existing accounting model for all auto leases?
 11 MR. BURKE: Objection. Asked and
 12 answered. You may answer again.
 13 A. No.
 14 Q. Do you believe that this is something
 15 that should have been brought to your attention?
 16 MR. BURKE: Objection.
 17 A. There weren't any problems that anybody
 18 was talking about.
 19 Q. Well, somebody was writing about a
 20 problem with the model on 7/31/2001, correct?
 21 MR. BURKE: Objection. Mischaracterizes
 22 the document; asked and answered.
 23 A. Yeah, I already commented on the
 24 document. I don't know what they meant. See what

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1 the problems are. That doesn't mean there are any.
 2 Q. Well, it goes on to say how the new one
 3 will fix those problems, correct?
 4 A. I didn't write the memo. I don't know
 5 what they meant.
 6 Q. Does it imply to you that --
 7 A. I'm not going to speculate on what it
 8 implies. I don't know what it means.
 9 Q. Can you read number 7 to yourself,
 10 please.
 11 A. Yeah, I read it already.
 12 Q. Okay. What is the exchange value that's
 13 referenced in the second sentence?
 14 A. I don't know. I would assume that's LKE
 15 value, but I don't know.
 16 Q. And the next sentence says, Review the
 17 amounts being removed and adjusted back to the GL.
 18 What's going on there?
 19 A. Don't know.
 20 Q. What's going on in the next sentence
 21 that says, Also, review the analysis of new
 22 production being able to fund the deals once
 23 accounts are paid off?
 24 A. Don't know.

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1 Q. Skip ahead to 952, please.
 2 A. (Examining document.)
 3 Q. Have you ever seen this memo before?
 4 A. No.
 5 Q. When you were informed that there were
 6 significant problems with respect to the model, did
 7 you gather up information that was related to the
 8 model from prior years?
 9 A. I didn't.
 10 Q. Why not?
 11 A. We gathered all relevant information,
 12 you know, for this stuff, and that's why you have
 13 this. It was all gathered. I didn't do it.
 14 Q. Do you believe that this is relevant to
 15 the accounting model?
 16 A. No. This looks to me like it's just,
 17 again, a comment on a meeting and that they're
 18 gonna -- that they will be performing a review.
 19 That's kind of what it says, and it talks about
 20 stuff, but it -- you know, that's all it says.
 21 Q. But if all these reviews were performed,
 22 how come --
 23 A. We review lots of stuff in the company.
 24 all the time. That's what audit's there for.

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1 Q. Internal audit?
 2 A. Yeah.
 3 Q. But if all these reviews of the specific
 4 model were being performed, how come nobody caught
 5 it?
 6 A. I can't tell you that. If we would have
 7 caught it, we'd fixed it. And we did. We did fix
 8 it.
 9 Q. Well, you fixed it too late to provide
 10 the correct information to the OHSL shareholders,
 11 correct?
 12 MR. BURKE: Objection. Argumentative.
 13 Move on.
 14 A. I can't comment on that.
 15 Q. You're not going to comment on that?
 16 A. I'm not going to comment on that, no.
 17 Q. Why not?
 18 A. I'm already -- I'm on the record a
 19 million times about this. Okay?
 20 Q. Well, when you're answering the
 21 questions in a way where you keep saying, well, we
 22 fixed it, I think I'm entitled to follow up and say
 23 that you didn't fix it in time to affect my
 24 clients.

84 (Pages 330 to 333)

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1 A. You can say anything you want.
 2 Q. What is an impairment analysis on the
 3 models?
 4 A. That would be on models where there's
 5 been gain-on-sale. It wouldn't have applied to the
 6 auto lease.
 7 Q. Okay. Let's take a look at the last two
 8 pages of the documents. What is an actual versus
 9 model comparison?
 10 A. I don't know. I've never seen this
 11 before.
 12 Q. The first part of this internal memo
 13 talks about step 3. Do you have any idea or can
 14 you figure out from the context what steps 1 and 2
 15 might be?
 16 A. No.
 17 Q. Do you know what the result was of the
 18 comparison to determine how the off-balance sheet
 19 auto lease securitizations are performing in
 20 comparison to the accounting model?
 21 A. No, other than nobody brought anything
 22 to anybody's attention that was a problem.
 23 Q. Do you agree that if this testing were
 24 done correctly, the problem would have been

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1 Q. Did you ever call these people into your
 2 office and talk to them?
 3 A. No, I wouldn't have.
 4 Q. Why not?
 5 A. There wasn't any need for it. There was
 6 no issue brought to my attention.
 7 Q. But isn't that in itself an issue? Why
 8 wasn't this brought to your attention?
 9 MR. BURKE: Why wasn't what brought to
 10 his attention? He just said the testing
 11 showed no problems.
 12 Q. Exactly, but when you found out there
 13 were no problems and that the problems went back
 14 for many years, why didn't you call these people
 15 into your office and demand an explanation?
 16 A. We hired PwC to do that review, and they
 17 conducted that review.
 18 Q. Did PwC provide you with some kind of a
 19 report at the end of the day?
 20 A. Yeah.
 21 THE WITNESS: What can we say about
 22 that?
 23 MR. BURKE: Yes, you can state that they
 24 did.

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1 identified in 2001?
 2 MR. BURKE: Objection. Calls for
 3 speculation.
 4 A. Don't know now how to answer that.
 5 Q. Well, aren't they testing exactly the --
 6 A. I can't -- I can't -- I can't answer the
 7 question. I really don't know what they could have
 8 done or not done at the time to catch it. I just
 9 don't.
 10 Q. Aren't they testing exactly the area
 11 that later became a problem?
 12 MR. BURKE: Objection.
 13 A. Testing the model.
 14 MR. BURKE: Calls for speculation.
 15 A. Testing the model, but -- you know,
 16 that's all I can say.
 17 Q. What were they testing the model for?
 18 MR. BURKE: Same objection.
 19 A. It would look to me like they were
 20 testing it for accuracy.
 21 Q. And did they determine in September of
 22 2001 --
 23 A. They must have determined that they were
 24 comfortable with it.

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1 A. Yeah, they did.
 2 Q. Okay. Describe that report to me.
 3 MR. BURKE: Objection. Instruct the
 4 witness not to answer. It's work product.
 5 Q. What was the purpose of PwC's report?
 6 A. Well, they were hired by the audit
 7 committee to do two things; to determine, number
 8 one, that the accounting that had been used, or
 9 whatever the proper word is, on the 5th of March
 10 was, in fact, correct. Okay? And number two, to
 11 determine if there was any inside culpability here
 12 as to, you know, an intentional misdeed.
 13 Q. Was this report prepared in anticipation
 14 of litigation?
 15 MR. BURKE: Objection. Instruct --
 16 A. It was prepared because the audit
 17 committee wanted to know the answers to those
 18 questions.
 19 Q. Describe the report to me. Was it a
 20 Power Point presentation; is it a bound volume; how
 21 thick is it? In any way you can, please describe
 22 it to me?
 23 A. I don't remember, frankly.
 24 Q. Did PwC make a Power Point or other

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1 presentation to the board?
 2 A. We had presentations to the audit
 3 committee. That's who hired them.
 4 Q. Did you attend the PwC presentation to
 5 the audit committee?
 6 A. I did not.
 7 Q. Did you see the report that they
 8 produced?
 9 A. I saw a report.
 10 Q. Okay. Describe what it looked like.
 11 A. Typed, as I recall.
 12 Q. How thick was it approximately?
 13 A. I don't remember.
 14 Q. Are we talking telephone book size?
 15 MR. BURKE: Objection.
 16 Q. Very thin?
 17 MR. BURKE: Asked and answered.
 18 A. I don't remember. I don't remember.
 19 Q. Was it as thick as this (indicating)?
 20 A. I don't remember.
 21 Q. Where is this document now?
 22 A. I frankly don't know where it is.
 23 Obviously, it's in our possession.
 24 MR. BRAUTIGAM: And Jim, your assertion

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1 is it's work product?
 2 MR. BURKE: Yes.
 3 MR. BRAUTIGAM: Whose work product?
 4 MR. BURKE: Because we hired them, my
 5 work product.
 6 A. They were actually --
 7 MR. BURKE: The audit committee hired
 8 them.
 9 A. They were actually hired by KMK, and
 10 engaged -- the audit committee engaged KMK, who
 11 then hired --
 12 Q. Right. Okay.
 13 A. -- PwC.
 14 Q. Okay. I thought that's what happened,
 15 but I thought your testimony skipped that step.
 16 A. Yeah.
 17 Q. Okay. But I just want to clarify this.
 18 The report was not prepared in anticipation of
 19 litigation, correct?
 20 MR. BURKE: Objection. Calls for
 21 speculation. He's not involved in the
 22 retention process. You may answer.
 23 A. Yeah, again, from my perspective, it was
 24 -- it was -- they brought PwC in for governance

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1 purposes, as they should have.
 2 Q. And you did or did not sit through PwC's
 3 presentation?
 4 A. Not to the audit committee.
 5 Q. Did they give a presentation to you?
 6 MR. BURKE: Who?
 7 Q. PwC.
 8 A. I don't remember if I had a
 9 presentation, or if we just read the report and
 10 talked to one of the senior guys, but I don't
 11 remember.
 12 Q. You did read the report, correct?
 13 A. I did read the report.
 14 Q. And you talked to one of PwC's senior
 15 guys about the report, correct?
 16 A. Yes.
 17 Q. Okay. Please tell me what you said and
 18 what he said as best you can recall.
 19 A. Well, the essence of it was that -- my
 20 question was are you comfortable that this was an
 21 unintentional error or not. That was my main
 22 issue.
 23 And they indicated that they were
 24 comfortable with that, that it was totally

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1 unintentional. That was my main thrust. That's,
 2 you know, a credibility issue in the market and we
 3 have to make sure what we have going on inside the
 4 company.
 5 Q. Did you have secondary thrusts?
 6 MR. BURKE: Objection to form; vague.
 7 A. Yeah, I'm not sure what that means.
 8 Q. You said your main thrust was was there
 9 any intentional conduct.
 10 A. In general, how it happened. I think
 11 the general answer was extraordinarily complex
 12 transaction, not as well understood within the
 13 company as it might have been; and with a lot of
 14 people involved in it, when there was a mistake,
 15 that probably contributed to the fact it wasn't
 16 picked up.
 17 Q. What is so extraordinarily complex about
 18 auto leases?
 19 A. Financing itself.
 20 MR. BURKE: Objection. Asked and
 21 answered.
 22 A. The securitizations. It's complex.
 23 Q. Did you believe that Ernst & Young had
 24 the appropriate resources and expertise to perform

86 (Pages 338 to 341)

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1 GAAS audits applying GAAP given the complexity of
2 the securitizations?

3 MR. BURKE: Objection. Calls for
4 speculation; no foundation.

5 MS. PERRY: Join in the objection.

6 A. Yeah, we did.

7 Q. When did you anticipate that a new model
8 for auto lease securitizations would be
9 implemented?

10 A. I really wasn't involved in this whole
11 new model/old model thing. I didn't have any
12 expectations about it.

13 Q. Would you look at page 954. Do you see
14 the subheading that says, Further comparison of the
15 nine off-balance sheet deals at C, dash, 2?

16 A. Right.

17 Q. What does C, dash, 2 refer to?

18 A. I don't know.

19 Q. And then it says, Three deals have
20 differences of actual rents received less than
21 model on more than one million dollars. Does that
22 appear significant?

23 A. Not necessarily in the scheme of the
24 whole thing, no.

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1 8.7 than model. Yeah, I don't know what that
2 means.

3 Q. And the next sentence says, This
4 analysis was reviewed with Michelle Beagle, and she
5 indicated it was an accurate assessment. Do you
6 see that?

7 A. I do.

8 Q. And does any of the information directly
9 above that indicate that there is perhaps a
10 significant problem with the model as of September
11 7th, 2001?

12 A. No.

13 Q. Michelle Beagle apparently goes on to
14 indicate that management has not set a particular
15 threshold for the models. What does that mean?

16 A. I don't know what it means.

17 Q. Why did management not set a particular
18 threshold that the models have to be accurate
19 within a certain percentage?

20 A. I don't know.

21 Q. The last sentence on this page going
22 over to the next page says, The percentage is not
23 the issue. It's the fact the models are off and
24 will continue to be off. Do you see that?

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1 Q. One deal has a difference of actual
2 rents received greater than model by more than one
3 million. Does that appear significant?

4 A. It's the other way. Again, in context
5 of the whole transaction, I've got billions in
6 financings here.

7 Q. Eight of the nine deals have an overall
8 difference of 5.6 percent or less. Does that
9 appear significant?

10 A. Again, I can't really answer that
11 question.

12 Q. The 1997, dash, 1 deal makes up over 6.7
13 million of the 8.7 million difference of actual
14 rents less than model. Does that appear
15 significant?

16 A. Yeah, I don't have any way of commenting
17 on that one way or the other.

18 Q. What does it mean to have 8.7 million
19 dollars difference of actual rents less than model?

20 A. I'm not sure other than what it says.

21 Q. Does that suggest to you that the model
22 is 8.7 million dollars higher than actual?

23 A. Not necessarily. It says that that
24 particular transaction is 6.7. I guess it does say

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1 A. Um-hum.

2 Q. Nobody told you about that in September
3 of 2001, correct?

4 A. No.

5 Q. In retrospect, is that something you
6 wished the internal people would have told you?

7 A. No.

8 MR. BURKE: Objection. Calls for
9 speculation.

10 A. It's not anything that would have, you
11 know, tipped me one way or the other on what was
12 going on.

13 Q. Why not?

14 A. Just wouldn't have.

15 Q. If someone had told you in September of
16 2001 that the models were producing differences in
17 the seven figures, close to eight figures, you
18 wouldn't have been interested in that?

19 A. Again, you know, folks, you know, didn't
20 deem that this was something that needed -- you
21 know, that was really that big a concern, or it
22 would have been raised. You have billions of
23 dollars of financings here. You know, I don't know
24 how to answer the question. I really don't know.

87 (Pages 342 to 345)

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1 Q. On the top of page 955, When the new
2 models are implemented, the plan will be to adjust
3 books quarterly to reflect actual activity. Do you
4 see that?

5 A. I do.

6 Q. Does that imply to you that from
7 September 7th, 2001, going back the number of
8 years, that the books did not reflect actual
9 activity?

10 MR. BURKE: Objection. Misstates the
11 record; assumes facts not in evidence. That's
12 absolutely inaccurate.

13 MS. PERRY: Join in the objection.

14 A. Yeah, I don't know what it means.

15 Q. Does it suggest to you --

16 A. I don't know what it implies. Okay? I
17 don't know.

18 Q. Does it suggest to you that the current
19 models are not properly recording what's actually
20 happening on Provident's books and records?

21 MR. BURKE: Objection.

22 A. Yeah, I --

23 MR. BURE: Same Objection. Calls for
24 speculation.

1 A. Yeah.

2 Q. And first bullet point is, Seven of the
3 nine deals have actual charge-offs less than the
4 model ranging from 8.9 percent to 27.8 percent. Do
5 you see that?

6 A. Yeah, where are you at? Oh, you're back
7 here?

8 Q. Yes, first bullet point under further
9 comparison of the nine off-balance sheet deals at
10 C-2. What does that first sentence that I just
11 read mean to you?

12 A. I don't know what it means. Those
13 numbers are not anything I really relate to, that
14 8.9 or the 27.8. You know charge-off levels and
15 this kind of stuff are under one percent. So I
16 don't know what they mean.

17 Q. Doesn't it imply to you that the model
18 is off ranging from 8.9 percent to 27.8 percent?

19 MR. BURKE: Objection.

20 A. I don't -- I don't know --

21 MR. BURKE: Mischaracterizes the
22 document.

23 A. I don't know what it means. Okay?

24 Q. Okay. what does it mean when it says

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1 A. I see the memo. I see what it says.

2 Okay? I'm not going to try to interpret it.

3 Q. Mr. Hoverson, do you not understand that
4 that's exactly the purpose of a deposition --

5 MR. BURKE: Objection. There's no to
6 need --

7 Q. -- to attempt to interpret a document
8 such as this?

9 A. It's not my document. I didn't write
10 it. Okay? I don't know anything about it. I
11 don't have the context of it, you know. I don't
12 know.

13 I can't speculate on what was in these
14 people's -- you know, what they were trying to say
15 here. I see the numbers. I'll acknowledge that
16 the numbers are what -- you know, that's what they
17 say they are.

18 Q. And you do you find this memo to be
19 disturbing?

20 MR. BURKE: Objection.

21 A. No.

22 Q. Let's look at the section, Further
23 comparison of the nine off-balance sheet deals at
24 C-2. Do you see that?

1 two deals of actual charge-offs greater than model
2 by 8.9 percent and 32.5 percent?

3 A. I don't know.

4 Q. What does it mean to have an actual
5 charge-off greater than model?

6 A. I don't know.

7 Q. What is a charge-off?

8 A. The credit charge.

9 Q. And...

10 A. Losses. Losses in this portfolio were
11 under one percent, so...

12 Q. How can you explain --

13 A. I can't.

14 Q. Okay. The last bullet point says,
15 Overall, actual charge-offs are \$1,059,668 less
16 than model or 6.8 percent of total model charge-
17 offs. What does that mean?

18 A. I don't know. I don't know.

19 Q. Next sentence reads, Per Michelle
20 Beagle, a comparison of percentages is not done by
21 management. Do you see that?

22 A. Um-hum.

23 Q. Who was doing the comparison of
24 percentages?

88 (Pages 346 to 349)

Page 350

1 A. I don't know anything about what is
 2 going on here. Okay?
 3 Q. Okay.
 4 A. I have no way of answering any of those
 5 questions.
 6 Q. The models are structured in a manner
 7 that is inconsistent with reality. Do you see
 8 that?
 9 A. I see it.
 10 Q. Does that bother you?
 11 A. I have no idea what it means.
 12 Q. Isn't it fairly plain what it means?
 13 MR. BURKE: Objection.
 14 A. No, it's not.
 15 MR. BURKE: Apparently not.
 16 A. No, it's not.
 17 Q. Why not?
 18 A. It could be constructed very
 19 conservatively, you know. I don't know what it
 20 means.
 21 Q. Doesn't it mean the model is wrong?
 22 MR. BURKE: Objection.
 23 A. I don't know that it means that at all.
 24 Q. Well, what does it mean to be --

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1 A. I don't --
 2 Q. -- structured in a manner --
 3 A. I don't --
 4 Q. -- inconsistent with reality?
 5 A. I don't know. You would have to ask
 6 them.
 7 Q. Okay. I will, but for right now, I'm
 8 asking you.
 9 A. I don't know.
 10 MR. BURKE: And his answer is I don't
 11 know.
 12 Q. Generally speaking, putting the document
 13 aside for the moment, if I were to come to you and
 14 say, Mr. Hoverson, I have a model and it's
 15 structured in a way that is inconsistent with
 16 reality, would that be something that would concern
 17 you as CEO of the company?
 18 MR. BURKE: Objection.
 19 A. And I would say, if you said that to me,
 20 what do you mean. Okay?
 21 Q. And I would then say --
 22 A. Get a bit more precise.
 23 Q. -- the model is top heavy in its
 24 estimate of charge-offs.

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1 A. I don't know what that means either.
 2 Q. It uses charge-offs of 50 basis points
 3 based on the outstanding balance. The charge-off
 4 estimates decrease monthly with the decrease of the
 5 outstanding balance?
 6 MR. BURKE: Is there a question?
 7 Q. Well, do you see that?
 8 MR. BURKE: Yeah, we see that. We're on
 9 the document. Everybody sees that. We're
 10 reading from it.
 11 Q. In reality, less charge-offs occur at the
 12 beginning of the deal that will likely increase
 13 over time. Do you see that?
 14 A. I do. This whole thing -- this whole
 15 paragraph would appear to be addressing an issue of
 16 basically kind of leveling out the charge-offs
 17 throughout the deal.
 18 Q. And it's a problem, correct?
 19 MR. BURKE: Objection.
 20 A. No, not necessarily at all. They're
 21 just taking them in kind of on a -- what they're --
 22 you know, on a level basis as opposed to -- they're
 23 actually recognizing -- they would imply they're
 24 recognizing more charge-offs in front and less in

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1 back, which would actually hurt income in front and
 2 help it in back.
 3 And they're just leveling it. Nothing
 4 charges off in 60 days. Right? Everybody pays
 5 their bills for 60 days. The charge-offs occur a
 6 little bit down the road.
 7 This is a model. So what they've done
 8 is they've modeled in -- I'm assuming. I don't
 9 know. Okay? -- that they have modeled in some kind
 10 of life approach to the charge-offs and kind of
 11 leveled it right consistent with the balance, that
 12 over the term, it's going to be 50 basis points.
 13 And that's the way we're going to
 14 recognize it because it's a model. I think that's
 15 -- that's kind of what that implies to me. Doesn't
 16 mean there's anything wrong with it.
 17 Q. Okay. The last sentence of the document
 18 reads, Management would be concerned -- become
 19 concerned if the account shows that actual charge-
 20 offs are significantly higher than model charge-
 21 offs. Do you agree with that statement?
 22 A. Yeah, probably.
 23 Q. Is that what happened in 2003?
 24 A. No.

89 (Pages 350 to 353)

Page 354

1 Q. Is that --
 2 A. It's not.
 3 Q. -- at odds with what happened in 2003?
 4 MR. BURKE: Objection to form.
 5 A. Has nothing to do with it.
 6 Q. Would you pick up document number 98,
 7 please.
 8 A. I'll be right back.
 9 MR. BRAUTIGAM: Let's take 5.
 10 (A brief break was taken from 5:39 to
 11 5:49, 10 minutes.)
 12 MR. BRAUTIGAM: It's 5:45 approximately.
 13 I intend to stop at 6:00. I have a wake to
 14 attend this evening, and that's the way it is.
 15 MR. BURKE: That is not the way it
 16 is. It's not acceptable to us, Mr. Brautigam.
 17 The witness on a prior break has
 18 indicated to you that we are here. We came
 19 here to finish this deposition today. We will
 20 stay as long as it takes.
 21 The court reporter just calculated how
 22 much time remains in the presumptive seven-
 23 hour limit that you have under the Federal
 24 Rules, and it's only an hour and 17 minutes.

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1 We're fully prepared to stay here to
 2 conclude this deposition. We're not agreeing
 3 to continue it. We're not agreeing to show up
 4 again, because we are affording you the full
 5 opportunity today to complete this deposition.
 6 And at no time prior to today did you
 7 talk to me in terms of there being a need to
 8 cut off at 6:00 or anything else.
 9 And the witness is here; the witness
 10 wants to finish it; the witness is prepared;
 11 and we've only got an hour and 17 minutes to
 12 go. So we're not agreeing to terminating, but
 13 obviously, you have the right to.
 14 MR. BRAUTIGAM: I just want to point out
 15 that in previous depositions, Rachael Rowe has
 16 insisted that the deposition stopped at
 17 5:00. I thought that would be the case.
 18 You are correct that we did not speak
 19 about this specific deposition. I am also
 20 concerned about getting an accurate record
 21 because I note that Mr. Hoverson is
 22 particularly difficult to take down.
 23 And I'm going to continue for a while,
 24 and then we'll stop, and I would respectfully

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1 request that you extend me the courtesy to
 2 allow me to attend a wake. If you are not
 3 willing to do that, I'll have to petition the
 4 court.
 5 MR. BURKE: You can attend the wake. I
 6 mean, nobody is stopping you from attending
 7 the wake. The bottom line is that we were
 8 here to conclude the deposition. It's your
 9 choice to terminate it when you wish.
 10 MR. BRAUTIGAM: Thank you for that
 11 courtesy.
 12 MR. BURKE: Thank you.
 13 BY MR. BRAUTIGAM:
 14 Q. Mr. Hoverson, do you have document 98 in
 15 front of you?
 16 A. I do.
 17 Q. Have you had an opportunity to review
 18 Plaintiffs' Exhibit 98?
 19 A. I looked at it.
 20 Q. Who are Lessor Capital Services?
 21 A. I'm not sure.
 22 Q. Were they some financial entity that
 23 assisted Provident in structuring its auto lease
 24 portfolio financing?

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1 A. I would assume that they were one of the
 2 firms that made a presentation regarding this. I
 3 don't know if they're the firm we used or not.
 4 They could be. I don't know.
 5 Q. Okay. How would you describe that? Are
 6 they an investment banking firm or --
 7 A. Again, I'm not sure who Lessor Capital
 8 Services is, but the people who presented about
 9 this were investment banking firms.
 10 Q. Okay. Could I direct your attention to
 11 the last bullet point on the first page of the
 12 document. Do you see that?
 13 A. Yeah.
 14 Q. And it talks about objectives at the
 15 top. Do you see that?
 16 A. I do.
 17 Q. And it says under this last bullet
 18 point, Enable Provident to move leases off-balance
 19 sheet and receive rating agency benefits by
 20 isolating and measuring the credit and residual
 21 risk inherent to the portfolio. Do you see that?
 22 A. I do.
 23 Q. Was that an objective of Provident in
 24 1997?

90 (Pages 354 to 357)

Page 358

1 A. I don't recall that it was one way or
2 the other, to be honest with you.
3 Q. Was it an objective of Provident to move
4 leases off-balance sheet?
5 A. Again, you know, I don't recall that
6 that was an objective. I wasn't involved. I
7 wasn't the CEO in '97 -- okay? -- when this
8 started.
9 Q. What was your position in '97?
10 A. EVP. Auto lease reported to me, but the
11 financing was -- financing area did not report to
12 me.
13 Q. Was it important to Provident to move
14 the leases off-balance sheet?
15 MR. BURKE: Objection. Asked and
16 answered a dozen times.
17 A. I don't know the answer to that
18 question.
19 Q. What is AMT?
20 A. I would normally think that would be
21 alternative minimum tax, but I don't know if that
22 applies to corporations. Maybe it does.
23 Q. I was going to ask you if that applies
24 to Provident?

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1 A. I don't know.
2 Q. Mr. Hoverson, let's talk about your
3 background. Where did you go to college?
4 A. University of Washington.
5 Q. Washington, D.C., or Washington State?
6 A. Washington State.
7 Q. When did you graduate?
8 A. 1968--1969.
9 Q. '69?
10 A. Yes.
11 Q. And what was your degree?
12 A. I have a BA in finance and an MBA in
13 finance in '71.
14 Q. From the same university?
15 A. Um-hum.
16 Q. And what was your first job after MBA
17 school?
18 A. Union Bank in Los Angeles.
19 Q. And what was your position?
20 A. Trainee.
21 Q. And what were your duties and
22 responsibilities as a trainee?
23 A. All sort of things. Learning how to be
24 a banker, was credit trained, went through their

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1 credit training program.
2 Q. And how long were you with Union Bank in
3 Los Angeles.
4 A. Three years.
5 Q. What did you do in or about '74.
6 A. Actually, I was in San Francisco by then
7 with Union Bank. I went to work for Itel
8 Corporation, which is a leasing company.
9 Q. Itel?
10 A. I-t-e-l.
11 Q. What did they lease?
12 A. Containers and rail cars, things like
13 that, computers.
14 Q. What was your title?
15 A. Vice president.
16 Q. For a specific field?
17 A. Equipment management.
18 Q. Did you say equipment management?
19 A. I did.
20 Q. And how long were you vice president for
21 equipment management?
22 A. I went there in '75 actually, I
23 think. Four years.
24 Q. And did --

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1 A. Four and a half years.
2 Q. -- your duties and responsibilities
3 change?
4 A. I ended up running the division before I
5 left.
6 Q. Did you become president?
7 A. No. I ran the division.
8 Q. How big a division was it?
9 A. Ten people.
10 Q. In terms of revenue?
11 A. I don't remember.
12 Q. What was the next stop?
13 A. The next stop was a company in Chicago.
14 That was one guy and myself for a year.
15 Q. What was the name of that company?
16 A. Cap Form.
17 Q. Cat, c-a-t?
18 A. Cap.
19 Q. Cap?
20 A. Form.
21 Q. What was the nature of that business?
22 A. It's equipment management and leasing
23 focused on rail equipment.
24 Q. Railroad stuff?

91 (Pages 358 to 361)

Page 362

1 A. Um-hum.
 2 Q. Would you lease a box, container?
 3 A. We didn't do leasing. We just arranged
 4 things. You would lease rail cars or locomotives
 5 or something like that to a railroad.
 6 Q. And you said this venture lasted about a
 7 year?
 8 A. Well, I left it after a year.
 9 Q. So that brings us to '77; is that right?
 10 A. That would bring you to 1980.
 11 Q. I missed a few. What happened in 1980
 12 with respect to your career?
 13 A. Helm Financial Corporation, H-c-l-m.
 14 Q. Where was that located?
 15 A. San Francisco.
 16 Q. What was your title?
 17 A. President.
 18 Q. What were your duties and
 19 responsibilities?
 20 A. I was a CEO.
 21 Q. How big a company in terms of revenue
 22 was Helm?
 23 A. It was pretty small. We started off
 24 with only three people. So we were, you know,

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1 doing deals, transactions, brokering deals, that
 2 sort of thing.
 3 Q. What type of deals were you brokering?
 4 A. Rail cars, locomotives, containers,
 5 chassis, that sort of thing.
 6 Q. Was this different from leasing?
 7 A. It was an offshoot of leasing.
 8 Q. And how long were you president and CEO
 9 of Helm?
 10 A. Five years.
 11 Q. What did you do professionally in or
 12 about 1985?
 13 A. Came to work for Provident Bank.
 14 Q. How did that come about?
 15 A. Was recruited.
 16 Q. Through a head hunter?
 17 A. No.
 18 Q. Through someone in the Lindner family?
 19 A. No.
 20 Q. Who recruited you?
 21 A. Allen Davis, the CEO.
 22 Q. How did you know Mr. Davis?
 23 A. I had done business with him.
 24 Q. Through Helm or --

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1 A. Um-hum, and Itel.
 2 Q. What was your first title with
 3 Provident?
 4 A. I don't honest to gosh remember.
 5 Q. What were your duties and
 6 responsibilities when you came here?
 7 A. I was put in charge of their leasing
 8 company.
 9 Q. Was that a separate subdivision?
 10 A. It was a subsidiary of the bank,
 11 Provident Leasing.
 12 Q. And was that primarily responsible for
 13 auto leases?
 14 A. No. It wasn't any auto lease at all.
 15 Q. What kind of leasing did --
 16 A. Same kind of stuff, bigger equipment.
 17 Q. Who would a typical client be?
 18 A. Railroads, airlines, that sort of thing,
 19 and, you know, anybody, any corporation. It was
 20 all commercial stuff.
 21 Q. Okay. And what was your next position
 22 with Provident?
 23 A. I just gradually got -- assumed more
 24 responsibility; took over retail. I turned this

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1 into a commercial finance kind of operation. Then
 2 I ended up with all commercial as well, and then
 3 trust and financial services. And by the time I
 4 was CEO, all the businesses reported to me.
 5 Q. When did you become CEO?
 6 A. '98.
 7 Q. '88?
 8 A. '98.
 9 Q. And when did you go on Provident's
 10 board?
 11 A. Then, when I became CEO.
 12 Q. And when you went on the board, did
 13 Provident have a chairman of the board?
 14 A. No.
 15 Q. Were you acting chairman of the board
 16 immediately?
 17 A. Yeah.
 18 Q. Do you do business with any of the
 19 Provident directors?
 20 A. No.
 21 Q. Do any of the board members do business
 22 among themselves?
 23 MR. BURKE: Objection. You may answer.
 24 A. I have no idea.

92 (Pages 362 to 365)

Page 366

1 Q. Do you know Judge Beckwith?
 2 A. No.
 3 Q. Do you know Magistrate Judge Hogan?
 4 A. No.
 5 Q. Describe your relationship with the
 6 Lindner family.
 7 MR. BURKE: Objection. Relevance.
 8 A. So I have to answer that? I mean,
 9 they're 40 percent owners of the bank. They're not
 10 involved in running the bank, you know, but I talk
 11 to them on a regular basis.
 12 Q. Did you talk to them specifically with
 13 respect to the restatements?
 14 A. Sure.
 15 Q. Who did you speak with specifically?
 16 A. Craig Lindner. You know what? I'm not
 17 sure I did talk to him about that.
 18 Q. Did you --
 19 A. I'd have to go back and check.
 20 Q. Did you attend any meetings with
 21 representatives?
 22 A. I think I did inform them, and then they
 23 basically waited until it was over.
 24 Q. What did you say to Craig Lindner?

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1 A. What I've told you.
 2 Q. And what did he say?
 3 A. He said let me know when you know.
 4 Q. Did you tell him to expect to take a
 5 significant hit with respect to the stock?
 6 A. I told him the nature of the situation,
 7 I mean, he could speculate on what was going to
 8 happen.
 9 Q. He could what?
 10 A. I didn't speculate on what was going to
 11 happen.
 12 Q. Was it obvious from the circumstances
 13 that the stock would take a steep hit?
 14 MR. BURKE: Objection. Calls for
 15 speculation.
 16 A. Yeah, it depends on the nature of it.
 17 Q. Do you have a change of control
 18 agreement with Provident?
 19 A. I do.
 20 Q. When was this put in place?
 21 A. In February.
 22 Q. Of this year?
 23 A. Um-hum.
 24 Q. And when was the deal finalized?

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1 A. February.
 2 Q. Was your change of control put in place
 3 before or after the deal was finalized?
 4 A. Before.
 5 Q. Couple days before?
 6 A. A few days.
 7 Q. What does your change of control
 8 contract call for?
 9 MR. BURKE: Objection. There's no
 10 relevance to this. And, you know, if we need
 11 to take time to get a protective order on
 12 this, we will; but there's no relevance to
 13 this.
 14 A. You know, go get what's in the public
 15 record.
 16 MR. BURKE: That's true. On second
 17 thought, you're right. It is in the public
 18 record.
 19 A. It's filed.
 20 MR. BURKE: So I withdraw the objection.
 21 A. I mean, you can go get it.
 22 Q. Well, I can do that or you can tell me.
 23 A. Three time salary; three times bonus.
 24 Q. What's your salary?

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1 A. 670.
 2 Q. What's your bonus?
 3 A. 400.
 4 Q. So if National City chooses not to
 5 include your employment, you're going to get 6
 6 million dollars?
 7 A. No.
 8 Q. How much will you get?
 9 A. About 3.3. Three times.
 10 MR. BURKE: You add them together, and
 11 multiply them by 3.
 12 Q. Got it. How did you come to be CEO of
 13 the company?
 14 A. Directors named me CEO.
 15 Q. How long has Provident been without a
 16 formal chairman of the board?
 17 A. Ever since I've been with the company,
 18 19 years.
 19 Q. Why is that?
 20 A. They just don't have one. There's no
 21 need to have one.
 22 Q. Seems an unusual corporate structure.
 23 Is that your experience?
 24 MR. BURKE: Objection.

93 (Pages 366 to 369)

Page 370

1 A. No. I mean, a lot of banks have the
2 same person as the chairman and president. I mean,
3 what's the difference if you don't have a
4 chairman? Same thing.

5 Q. Are you familiar with Sarbanes-Oxley?

6 A. I am.

7 Q. What is your understanding of the
8 Sarbanes-Oxley Act?

9 MR. BURKE: Objection. Calls for a
10 legal conclusion.

11 (Off-the-record interruption.)

12 A. What's the point answering that? The
13 thing is hundreds of pages long.

14 MR. BRAUTIGAM: I think we should stop.

15 (A brief break was taken from 6:03 to
16 6:05, two minutes.)

17 MR. BURKE: Objection. Calls for a
18 legal conclusion.

19 A. I have no idea how to answer. The thing
20 is hundreds if not thousands of pages long.

21 Q. What do you do differently after the
22 passing of Sarbanes-Oxley as opposed to before?

23 MR. BURKE: Objection. Irrelevance;
24 calls for legal conclusion. You may answer.

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1 knowledge, and you better have some kind of a
2 process in back of it that gives you good reason to
3 rely on your process to say, to the best of my
4 knowledge, they're okay.

5 Q. And these certifications have to be
6 based on personal knowledge, correct?

7 A. To the best of your knowledge.

8 Q. And describe in greater detail the
9 backup that you were talking about.

10 A. We create a process that goes out there
11 every quarter and pulls in any issues that people
12 have. It's meant to surface issues if there are
13 any.

14 Q. And who has to certify -- or file these
15 certifications? The CEO and the CFO?

16 A. Yes.

17 Q. Does Sarbanes-Oxley have a preference
18 for whether the positions of chairman and CEO
19 should be split?

20 A. I don't think so.

21 Q. Does Sarbanes-Oxley --

22 A. I don't think it addresses that.

23 Q. Does Sarbanes-Oxley have any limitations
24 with respect to outside work that the auditors can

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1 A. Frankly, banks don't do a whole lot
2 because we were already pretty firmly regulated
3 on -- an awful lot of stuff that Sarbanes-Oxley
4 prohibits, banks couldn't do anyway.

5 So it didn't -- it hasn't really changed
6 a lot of stuff for us. Obviously all the
7 certifications and all of that stuff is new per
8 Sarbanes-Oxley.

9 But as it relates to things that you're
10 no longer allowed to do, that you used to be able
11 to do, banks couldn't do that stuff anyway. So it
12 really hasn't had a very big impact on banks.

13 We have -- the majority of our directors
14 are independent. We don't have any business stuff,
15 you know, on and on and on and on, no insider
16 loans, you know, all that stuff. So it really
17 hasn't had a huge impact on banks in general.

18 Q. Tell me about the certification.

19 A. Well, everybody certifies their
20 statements these days.

21 Q. What does it mean to certify the
22 statements these days?

23 A. Sign a certification each quarter to
24 certify they're correct to the best of your

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1 do; in other words, non-audit services?

2 MR. BURKE: Objection.

3 A. Yeah, I believe it does.

4 MR. BURKE: Calls for legal conclusion.

5 You may answer.

6 A. I think it does.

7 Q. What is your understanding of that?

8 A. Well, you can't have an auditor, for
9 example, being your internal auditor and also
10 auditing your books. You can't have an auditor
11 doing an extensive consulting work for you and
12 being your independent auditor, that sort of thing.

13 Q. The first part was true even before
14 Sarbanes-Oxley, correct?

15 A. Should have been if it wasn't.

16 Q. Does Ernst & Young do any consulting
17 work for Provident?

18 A. Not really.

19 Q. Do they do any tax work?

20 A. They do our taxes.

21 Q. And does --

22 A. It's permitted.

23 Q. Does Sarbanes-Oxley speak to that?

24 A. Yeah. It permits tax work.

94 (Pages 370 to 373)

Page 374

1 Q. You said not really with respect to
 2 consulting. That implies to me they do some.
 3 A. They don't really anymore. We had them
 4 look at a couple processes along the way and help
 5 us do some things, but they were pretty minor
 6 things, not any big deal.
 7 Q. Was that as a result of Sarbanes-Oxley
 8 or otherwise?
 9 MR. BURKE: Was what as a result of
 10 Sarbanes-Oxley?
 11 Q. The change.
 12 A. I suppose these days, you wouldn't do
 13 anything. It's easier not to.
 14 Q. Mr. Hoverson, do you serve on any other
 15 boards of public companies?
 16 A. No.
 17 Q. Do you serve on boards of non-Provident?
 18 A. Um-hum.
 19 Q. Have you ever served on a board of
 20 another public company?
 21 A. No.
 22 Q. How many of the board members currently
 23 on the board were there when you first became CEO
 24 in '98?

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1 A. All of them.
 2 Q. So you did not recruit any of the board
 3 members?
 4 A. No.
 5 Q. And the composition of the board has
 6 stayed the same; is that correct?
 7 A. Yes.
 8 MR. BRAUTIGAM: Mr. Hoverson, it's 10
 9 after 6:00. I'm going to shut this down now
 10 because of a personal obligation that I
 11 have. And I thank you for your time. I hope
 12 we meet again.
 13 MR. BURKE: We're obviously reserving
 14 our rights as we indicated earlier. And
 15 obviously, the amount time allowed or
 16 remaining is even less than an hour at this
 17 point in time. So we believe that we should
 18 and could continue tonight.
 19 MR. BRAUTIGAM: Well, I just want to say
 20 I don't agree that I'm limited to seven hours.
 21 I understand that it's presumptive.
 22 This is complex litigation, and this is
 23 the CEO of the acquiring company. So I guess
 24 we'll dispute that on the papers.

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1 MR. BURKE: Okay. Fair enough.
 2 (DEPOSITION ADJOURNED AT 6:10 P.M.)
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 4
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ROBERT HOVERSON

Page 377

1 CERTIFICATE
 2 STATE OF OHIO :
 3 : SS
 4 COUNTY OF HAMILTON :
 5 I, Kelly Green, the undersigned, a duly
 6 qualified and commissioned notary public within and
 7 for the State of Ohio, do hereby certify that
 8 before the giving of the aforesaid deposition, the
 9 said ROBERT HOVERSON was by me first duly sworn to
 10 tell the truth; that the foregoing is a deposition
 11 given at said time and place by the said ROBERT
 12 HOVERSON; that said deposition was taken in all
 13 respects pursuant to notice as to the time and
 14 place; that said deposition was taken by me in
 15 stenotype and transcribed by computer-aided
 16 transcription under my supervision; and that
 17 examination and signature to the transcribed
 18 deposition is not waived.
 19 I further certify that I am not a
 20 relative, employee of, or attorney for any of the
 21 parties in the above-captioned action; I am not a
 22 relative or employee of an attorney of any of the
 23 parties in the above-captioned action; I am not
 24 financially interested in the action; I am not, nor
 is the court reporting firm with which I am

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1 affiliated, under a contract as defined in Civil
2 Rule 28(D).

3 IN WITNESS WHEREOF, I hereunto set my
4 hand and official seal of office at Cincinnati,
5 Ohio, this 5th day of June, 2004.
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7

8 My commission expires: Kelly Green
9 August 9, 2004 Notary Public/State of Ohio
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